

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF MILPITAS AT THE REGULAR MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION ON NOVEMBER 8, 2016, A REFERENDUM MEASURE REGARDING RESOLUTION NO. 8532, AWARD OF CONTRACT TO WASTE MANAGEMENT, INC.

WHEREAS, on April 14, 2016, the City Clerk received a petition for a referendum on adopted Resolution No. 8532 (“Resolution Subject to Referendum”), containing 146 sections with 3,777 voter signatures, in order to seek to repeal the Resolution Subject to Referendum; and

WHEREAS, pursuant to Elections Code Section 9237, the petition was signed by more than 10% of the total number of registered voters in Milpitas, as last reported to the California Secretary of State, and filed with the elections official of the City of Milpitas within 30 days of the date the City Clerk attested the adopted Resolution Subject to Referendum; and

WHEREAS, the City Clerk has certified that the petition was signed by the requisite number of voters; and

WHEREAS, pursuant to City Municipal Code section I-200-1.00 and the laws of the State of California, the City Council has passed Resolution No. _____, calling a general municipal election for the purpose of electing a Mayor and two members of the City Council, requesting that the general municipal election be consolidated with the Statewide general election to be held on Tuesday, November 8, 2016, and requesting that the Board of Supervisors of Santa Clara County direct the Registrar of Voters thereof to take any and all necessary steps to conduct the consolidated election; and

WHEREAS, the City Council desires to consolidate the election of the Resolution Subject to Referendum with the General Municipal Election to be held on November 8, 2016.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. **Record; Recitals.** The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth are found to be true and correct and are incorporated herein by reference.
2. **Submission of Resolution Subject to Referendum.** The City Council hereby orders the Resolution Subject to Referendum attached hereto as Exhibit “A” be submitted to the qualified voters of the City at the general municipal election on Tuesday, November 8, 2016. The proposed Resolution Subject to Referendum shall be in the form attached hereto as Exhibit “A” to this Resolution and is incorporated by this reference as if fully set forth herein.
3. **Ballot Measure.** The City Council does hereby order that the ballot measure shall be presented and printed upon the November 8, 2016, ballot and submitted to the qualified voters in substantially the following form:

Shall Resolution No. 8532 authorizing an Exclusive Franchise Agreement with Waste Management, Inc. for Solid Waste Disposal Services, which was approved by the Milpitas City Council on March 15, 2016 but suspended by referendum petition on April 14, 2016, be adopted?	YES
	NO

4. **Election Procedures.**

- a. Consolidated Election. Per Elections Code section 10403, the Board of Supervisors of the County of Santa Clara County is requested to consent to the consolidation of the election for the Resolution Subject to Referendum with the statewide general election to be held on Tuesday, November 8, 2016 for the purpose of submitting the Resolution Subject to Referendum to the voters of the City of Milpitas. The City acknowledges that the consolidated election will be held and conducted in the manner prescribed in Section 10418.
- b. County Election Services. In accordance with Elections Code section 10002, the City of Milpitas requests the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters of the County of Santa Clara to render such election services to the City of Milpitas as may be requested by the City Clerk, and the County of Santa Clara is to be reimbursed in full for such services as are performed. The election services which the City of Milpitas requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts, polling places, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Milpitas; and the performance of such other election services as may be requested by the City Clerk.
- c. City Clerk Election Services. The City Clerk is authorized, instructed and directed to prepare any documents and take any additional actions that may be necessary in order to properly and lawfully conduct the election.
- d. Polls. The polls for the election shall be open at 7:00 a.m. (PST) on election day and shall remain open continuously from that time until 8:00 p.m. (PST) on the same day when the polls shall be closed.
- e. Notice. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- f. Ballot Procedure; Certification. The ballots to be used at the election shall be in the form and content as required by law. All ballots shall be tallied at a central counting place and not at the precincts. The Santa Clara Registrar of Voters is hereby authorized to canvas the returns of the election. The City Clerk of the

City of Milpitas shall receive the canvass as it pertains to the election on the Resolution Subject to Referendum, and shall certify the results to the City Council, as required by law.

- g. Conduct of Election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.

5. **Impartial Analysis.** The City Clerk is directed to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments. The City Council hereby directs the City Attorney to prepare an impartial analysis of the ballot measure not to exceed five hundred (500) words in accordance with Elections Code Section 9280. The impartial analysis shall include a statement indicating that the proposed ballot measure was placed on the ballot by a petition signed by the requisite number of voters. In the event the entire text of the Resolution Subject to Referendum is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10 point font bold type, the following: "The above statement is an impartial analysis of Resolution or Measure _____. If you desire a copy of the resolution or measure, please call the election official's office at (insert phone number) and a copy will be mailed at no cost to you."
6. **Arguments in Favor and Opposed.** Pursuant to Elections Code Sections 9282(a), the proponents filing a petition may prepare and submit a written argument in favor of the proposed ballot measure, not to exceed three hundred (300) words in length, and the City Council may submit an argument against the proposed ballot measure. The City Council hereby designates councilmembers _____ and _____ to prepare and file an argument and rebuttal on behalf of the City Council. Such written arguments in favor of or opposed to the proposed measure may include up to five (5) signatures in accordance with Elections Code Section 9283.
7. **Arguments For and Against; Rebuttals.** The City Council hereby authorizes arguments for and against the ballot measure and rebuttals to be filed in accordance with Elections Code Section 9282-9287 and establishes August 16, 2016, at 5:00 p.m. (PST) as the deadline to file arguments for and against the ballot measure, and August 23, 2016, at 5:00 p.m. (PST) as the deadline to file rebuttals. The City Council hereby approves the submittal of rebuttals in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.
8. **Public Examination Periods.** The City Council hereby establishes August 17, 2016, through August 26, 2016, as the ten (10) calendar day examination period required by Elections Code Section 9295 with respect to arguments for and against the ballot measure and the impartial analysis. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure and the argument against the ballot measure in the City Clerk's office at 455 E. Calaveras Blvd., Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.

The City Council hereby establishes August 24, 2016, through September 2, 2016, as the ten (10) calendar day examination period required by Elections Code Section 9295 with respect to any rebuttals. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure, the argument against the ballot measure, and any rebuttals in the Office of the City Clerk at 455 E. Calaveras Blvd., Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.

- 9. **Placement on the Ballot.** A statement shall be printed in the ballot pursuant to Elections Code sections 9243 and 9223 advising voters that they may obtain a copy of the Resolution Subject to Referendum, at no cost, upon request made to the City Clerk.
- 10. **Delivery of Resolution to County.** The City Clerk is hereby directed to deliver certified copies of this Resolution to the Clerk of the Board of Supervisors of Santa Clara County and the Registrar of Voters of Santa Clara County promptly upon its adoption.
- 11. **Severability.** If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.
- 12. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this ____ day of ____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT “A”

RESOLUTION NO. 8532

[Attached behind this cover page]

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN EXCLUSIVE FRANCHISE AGREEMENT WITH
WASTE MANAGEMENT, INC. FOR SOLID WASTE DISPOSAL SERVICES**

WHEREAS, the City of Milpitas had previously awarded an exclusive franchise to Republic Services, Inc. for the disposal and collection of solid waste in the City that will expire on September 5, 2017.

WHEREAS, in anticipation of the expiration of the existing franchise agreement, the City put out a Request for Proposals (RFP) seeking proposals for disposal services only, and proposals for collection services only.

WHEREAS, the City received two proposals for disposal services, including from GreenWaste Recovery, Inc. (with the Monterey Regional Waste Management District) and Waste Management, Inc. A third entity, Republic Services, Inc., sought to be considered for the disposal contract, but failed to submit a disposal proposal as defined under the terms of the RFP.

WHEREAS, at the January 12, 2016 City Council study session, the two proposers presented their qualifications and approach for managing Milpitas' disposal services beginning in September 2017.

WHEREAS, as part of the RFP process, a City Evaluation Committee was formed to review and evaluate the disposal proposals, with the Committee recommending the selection of Waste Management, Inc.

WHEREAS, Public Resources Code Section 40059 and Milpitas Municipal Code Section V-200-5.10 authorizes the City to award an exclusive franchise for the disposal of solid waste, and to determine the procedure by which such franchises will be awarded.

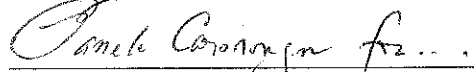
NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves and authorizes the City Manager to execute an exclusive franchise agreement with Waste Management, Inc. for solid waste disposal services.

PASSED AND ADOPTED this 15th day of March 2016 by the City Council by the following vote:

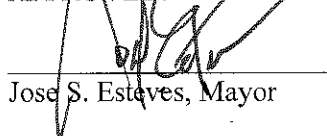
AYES: (5) Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo, Giordano, and Grilli
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

ATTEST:



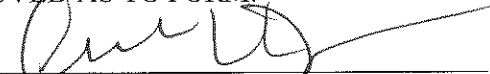
Mary Lavelle, City Clerk

APPROVED:



Jose S. Esteves, Mayor

APPROVED AS TO FORM:



Christopher J. Diaz, City Attorney

AGREEMENT
BETWEEN
THE CITY OF MILPITAS
AND
USA WASTE OF CALIFORNIA, INC. D/B/A WASTE MANAGEMENT OF
SOUTH BAY
FOR
DISPOSAL OF SOLID WASTE

_____, 2016

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- A. Definitions
- B. Reserved
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- D. Contractor's Proposal
- E. Performance Bond
- F. Labor Agreement(s)
- G. Per-Ton Rates Approved by City for Rate Period One
- H. Approved Subcontractors

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and Disposal of such material at appropriate places of Disposal; and, therefore, desires that Contractor be engaged to perform such services on the basis set forth in this Agreement.

WHEREAS; the City and Contractor have attempted to address conditions affecting their performance of services under this Agreement but recognize that reasonably unanticipated conditions may occur during the Term of this Agreement that will require the Parties to meet and confer to reasonably respond to such changed conditions;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1. GRANT AND ACCEPTANCE OF AGREEMENT

1.1 Grant and Acceptance of Agreement

Through this Agreement, the City grants to Contractor the right and privilege to Dispose of all Solid Waste Collected in the Service Area by the Franchised Collector including street sweeping debris, and that is Delivered by the Franchised Collector with the City intention of Disposal. This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and during the Term of the Agreement. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully included herein and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws and the Contractor may meet and confer with City and may petition for a Rate adjustment pursuant to Section 8.5.

1.2 Reserved

1.3 Obligations of Both Parties

In addition to the specific performance required under the Agreement:

- A. Contractor shall use its reasonable commercial efforts to enforce its rights under this Agreement by the Contractor's identification and documentation of violations of the Agreement by third parties.
- B. Contractor and City shall provide timely notice to the other Party of a failure or perceived failure to perform any obligations under this Agreement, and each shall have access to information demonstrating the Party's failure or perceived failure to perform.
- C. Contractor and City shall provide timely access to the City Contract Manager and the Contractor's designated representative as applicable, and complete and timely responses to requests of the other Party.
- D. Contractor and City shall provide timely notice of matters which may affect either Party's ability to perform under the Agreement.

1.4 City Obligations

City obligations are limited to the following.

- A. Provide for Delivery of Solid Waste.** The City shall, at all times, direct all Solid Waste that is Collected in the Service Area by the Franchised Collector, and that is intended by the City for Disposal to be Delivered to the Approved Disposal Facility.
- B. Excluded Waste.** The City shall direct its Franchised Collector to implement an Excluded Waste screening, identification, and prevention protocol. City shall prohibit its Franchised Collector from knowingly delivering Excluded Waste to the Approved Disposal Facility.
- C. Adjustment of Per-Ton Rates.** The City shall ensure that Contractor's Per-Ton Rates are adjusted as provided in Article 8.

ARTICLE 2. TERM OF AGREEMENT

2.1 Term and Option to Extend

The Term of this Agreement shall commence September 6, 2017 (Commencement Date) and continue in full force for a period of twenty (20) years, through and including December 30, 2037, unless the Agreement is extended in accordance with this Section or terminated pursuant to Section 10.2. Beginning with the Effective Date, Contractor shall perform all activities necessary to ensure it can provide the full services required by this Agreement on the Commencement Date.

Except as provided below in this Section 2.1, the Term of this Agreement shall only be extended with the prior consent of both Parties. Should the Parties choose to extend this Agreement, both Parties shall meet and confer no later than one (1) year prior to the expiration of this Agreement to determine and specify the duration and terms of such extension.

Notwithstanding the above, City may at its sole discretion and with a six (6) month notice, require Contractor to enter into a one (1) year extension of the Agreement without changes to its material provisions.

2.2 Conditions to Effectiveness of Agreement

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may be waived, in written form, in whole or in part by City.

- A. Accuracy of Representations.** The Contractor's representations and warranties made in Contractor's Proposal and Article 11 of this Agreement are true and correct on and as of the Effective Date.
- B. Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the insurance and performance bond required by Article 9 that is satisfactory to the City.
- C. Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or

threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

1. Materially adversely affect the performance by Contractor of its obligations hereunder;
2. Adversely affect the validity or enforceability of this Agreement; or,
3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

- D. **Permits Furnished.** Contractor has provided City with copies of all permits necessary for operation of the Approved Disposal Facility owned or operated by Contractor or Subcontractor for use under the terms of this Agreement.

ARTICLE 3. SCOPE OF AGREEMENT

3.1. Summary Scope of Services

The Contractor shall be responsible for the following:

- A. Acceptance and Disposal of Solid Waste Delivered to the Approved Disposal Facility by the Franchised Collector;
- B. Performing all other services required by this Agreement including, but not limited to, record keeping and reporting pursuant to Article 6;
- C. Furnishing all labor, supervision, equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement;
- D. Obtaining and maintaining all permits and regulatory approvals necessary to perform the services specified in the Agreement;
- E. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, City fees, and utilities, and closure and post-closure of the Approved Disposal Facility;
- F. Receiving proceeds from the Per-Ton Rates as the only compensation for provision of services under this Agreement;
- G. Performing or providing all services specified in this Agreement at all times in accordance with Applicable Laws and the specified requirements of this Agreement; and,
- H. Performing or providing all services specified in this Agreement at all times in accordance with best industry practices with due diligence.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere in the Agreement, unless excused in accordance with Section 10.7.

3.2 Limitations to Scope

The scope of this Agreement does not include Acceptance or Disposal of the following:

- A. Solid Waste generated in the City which is not Collected by the City or its Franchised Collector.

- 145 B. Solid Waste generated outside of the City.
- 146 C. E-Waste, Universal Waste, Hazardous Waste and sharps Collected by the Franchised Collector
147 under the terms of its agreement with the City.
- 148 D. Other material Collected by the Franchised Collector but excluded from the definition of Solid
149 Waste.
- 150 E. Residue resulting from Processing of materials generated in the Service Area.

151 **3.3 Use of Approved Disposal Facility**

152 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,
153 agrees to use the Approved Disposal Facility for the purposes of Disposal of all Solid Waste Delivered by
154 the Franchise Collector under the terms of this Agreement. Such decision by Contractor in no way
155 constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or
156 any definition thereof.

157 Contractor shall maintain accurate records of the quantities of Solid Waste Delivered to and Accepted at
158 the Approved Disposal Facility and will cooperate with City and any regulatory authority in any audits or
159 investigations of such quantities.

160 **3.4 Capacity Assurance**

161 Contractor warrants that as of the Commencement Date it has sufficient capacity at the Approved
162 Disposal Facility to Dispose of all Solid Waste Delivered by the Franchised Collector as intended for
163 Disposal throughout the Term, and that it shall maintain that capacity through the Term.

164 If at any time during the Term or an extension Contractor fails to provide the capacity needed to fulfill
165 its obligations under this Agreement, the City may assess Liquidated Damages for each Ton of the City's
166 Solid Waste that the Contractor does not Accept in accordance with Section 10.6.B.

167 **3.5 No Limitation on City Diversion Programs**

168 The City maintains programs to reduce the amount of waste intended for Disposal. It is the City's intent
169 to continue to improve, develop, and enhance existing programs as well as to implement new programs
170 and services throughout the Term as it deems necessary to meet or exceed mandated Diversion
171 program requirements and goals established by AB 939 and subsequent federal, State, County or local
172 legislation including, but not limited to the State 75 percent recycling goal established in AB 341 and the
173 programmatic requirements of AB 1826. Contractor acknowledges that the characterization and
174 quantity of materials Delivered to the Approved Disposal Facility will change over the Term and may
175 over time be significantly different than that as of the Commencement Date of the Agreement.

176 Nothing in this Agreement shall prevent, penalize, or impede, in any manner, the City from continuing
177 programs, altering programs, or developing new programs that have the effect of reducing or increasing
178 the amount of Solid Waste Collected and Delivered to the Approved Disposal Facility by the Franchised
179 Collector, including Processing of Collected Solid Waste in lieu of Delivery for Disposal.

180 However, in the event City directs Processing of Solid Waste by a third party for purposes of Diverting
181 recoverable elements thereof, instead of Delivery for Disposal, City shall cause the third party to Deliver
182 to the Approved Disposal Facility a tonnage of material ("Residue") for Disposal equivalent to the non-
183 recovered fraction of the Processed Solid Waste. The City will provide documentation to Contractor to

evidence that equivalent tons of all Residue from the Processed Solid Waste are delivered to the Approved Disposal Facility.

3.6 No Tonnage Obligation; Only Compensation

A. No Tonnage Obligation. This Agreement neither expresses nor implies City commitment to cause Delivery of any minimum tonnage of Solid Waste to the Approved Disposal Facility or Alternative Facilities, or corresponding compensation for undelivered minimum tonnages in the form of "put-or-pay" payments.

B. Only Compensation. The then-current Per-Ton Rate as provided in Article 8, as adjusted, shall be the only form of compensation due Contractor for services provided under this Agreement. Per-Ton Rates shall not be adjusted for any changes in the characterization of, quantity of, or other changes to Solid Waste it receives. Nor shall any action, or lack of action by City regarding the availability of Solid Waste for Disposal provide Contractor the opportunity for an adjustment to the Maximum Rates.

3.7 Subcontracting

Contractor shall not engage any Subcontractors without the prior written consent of City Contract Manager. As of the Effective Date of this Agreement, City has approved Contractor's use of those subcontractors identified in Contractor's Proposal (Exhibit D), included herein as Exhibit H. If the Contractor plans to engage other Affiliate or related party entities in the provision of services, Contractor shall obtain written approval from City Contract Manager thirty (30) days prior to its plans to use party. Contractor shall submit written request to the City seeking approval of other Affiliate or related party entities. Such request shall include a description of its plans, name and qualifications of party, and an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement.

3.8 Transfer of Ownership and Responsibility for Delivered Material

Once Solid Waste is Delivered by the Franchised Collector and Accepted by Contractor at the Approved Disposal Facility, full ownership and the right to possession of the Solid Waste shall transfer to the Contractor. All benefits and liabilities resulting from ownership and possession of the Solid Waste shall accrue to Contractor except as provided in Section 3.11.

Responsibility for Excluded Waste that has been Accepted by the Contractor shall remain with the Contractor as provided in Section 5.3.

3.9 City Contract Manager

City has designated the City Contract Manager, to be responsible for monitoring and administration of this Agreement. Contractor shall meet and confer with the City Contract Manager to resolve differences of interpretation and implement and execute the requirements of this Agreement in an efficient, effective, manner that is consistent with the stated objectives of this Agreement.

From time to time the City Contract Manager may designate other agents of City to work with Contractor on specific matters. In such cases, those individuals should be considered designates of the City Contract Manager for those matters to which they have been engaged. Such designates shall be afforded all of the rights and access granted thereto. In the event of a dispute between the City Contract Manager's designate and Contractor, the City Contract Manager's determination shall be conclusive.

In the event of dispute between the City Contract Manager and the Contractor regarding the interpretation of or the performance of services under this Agreement, the City Contract Manager's determination shall be conclusive except where such determination results in a material impact to the Contractor's revenue and/or cost of operations. In the event of such material impact to the Contractor, Contractor may appeal the determination of the City Contract Manager to the City Council, whose determination shall be conclusive. For the purposes of this Section, "material impact" is an amount equal to or greater than one-quarter (1/4) of one (1) percent of Contractor's annual Gross Receipts under this Agreement. Should Contractor disagree with a determination of the City Contract Manager or City Council, it shall have the right to present its claim in a court of competent jurisdiction

3.10 Cooperation with City or County

The Contractor shall with no added compensation cooperate with the City, its agent, and/or Santa Clara County and/or its agent, or any State regulatory authority and/or its agent if the City or County or State regulatory authority seek to collect data, perform field work, and/or evaluate and monitor Diversion program results through characterization of Solid Waste, including providing reasonably requested data, allowing visits to the Approved Disposal Facility, and allowing use of Contractor-designated areas of the Approved Disposal Facility as needed to perform Solid Waste characterizations.

Contractor shall also cooperate with City and/or County or State regulatory authority by providing requested data and review and otherwise assisting with any Disposal Reporting System Investigations or Origin Report Studies by providing documentation deemed reasonably necessary by the City Contract Manager, the County or State regulatory authority.

3.11 Carbon Offset Credits

In the event Contractor has or will receive benefits from carbon offset credits or other environmental credits obtained by Contractor related to services performed under this Agreement, the Parties shall meet and confer. Contractor shall promptly notify City as soon as it learns that it has or will receive such benefits, and the Parties shall meet to determine a fair City share of profits after Contractor is paid its margins and return on capital investment. Such City share shall be limited to investments Contractor makes after the Effective Date and shall accurately reflect the relative tonnage of Solid Waste caused to be Delivered by City.

3.12 City-Directed Changes to Scope

City may meet and confer with Contractor to establish the scope of any additional services or modification to existing services (which may include use of the Approved Disposal Facility) to be provided under this Agreement. In such case, Contractor shall present, within thirty (30) calendar days of City's request, a written proposal to provide such modified or additional services.

City shall review the Contractor's proposal for the change in scope of services. City and Contractor may meet and confer to negotiate Contractor's proposed revisions and costs and shall amend this Agreement, as appropriate, to reflect the mutually agreed-upon changes in scope.

ARTICLE 4. DISPOSAL SERVICES

4.1 General

Contractor shall perform the services described in this Article 4. Failure of Agreement to specifically require an act necessary to perform the service does not relieve Contractor of its obligation to perform such act. To the extent any of the services specified in Article 4 are provided by a City-approved Subcontractor, the requirements of Article 4 shall pertain.

4.2. Reserved

4.3 Disposal Operations

Contractor shall provide Disposal services at the Approved Disposal Facility in accordance with Applicable Laws and regulations, best industry practice, due diligence and specification, and other requirements of this Agreement. In addition, Contractor shall comply with the following service specifications:

- A. Operating, managing, and maintaining the Approved Disposal Facility including all buildings, scales, roads, and utilities.
- B. Operating, managing and maintaining the Solid Waste fill areas, including the placement, burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and compaction of daily cover, intermediate cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration.
- C. Providing and maintaining staffing levels and expertise as necessary or required to ensure safe and lawful operation at all times, and as provided in Section 5.4.
- D. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations, Closure, Post-Closure, and environmental monitoring.
- E. Operating and maintaining the scale house and scale system and weighing Solid Waste Delivered by Franchised Collector as specified in Section 4.4 of this Agreement.
- F. Ensuring that Franchised Collector vehicles can enter and leave the Approved Disposal Facility property within the turnaround times specified in Section 5.2.
- G. Providing residents of, and businesses located within, the Service Area an opportunity to drop-off material at a location approved by the City, as provided in Section 4.5.
- H. Directing on-site traffic to appropriate unloading areas and providing a safe working environment for Approved Disposal Facility users, visitors, and employees.
- I. Safely managing the Solid Waste Delivered to or Transported to the Approved Disposal Facility.
- J. Implementing an Excluded Waste screening, identification, and prevention protocol as provided in Section 5.3. Contractor shall not knowingly place Excluded Waste in the fill area of the Approved Disposal Facility.
- K. Operating, maintaining, and managing liquids ("leachate") and landfill gas management systems, groundwater monitoring and management systems, storm water drainage and control systems,

297 treatment facilities, buildings, on-site roadways, utilities, and any other required Facility
298 elements.

299 L. Conducting required or prudent Closure and Post-Closure activities as provided in Section 5.8.

300 M. Arranging for Alternative Facilities.

301 Contractor may, at its sole discretion, use Solid Waste for Beneficial Reuse in compliance with Applicable
302 Law.

303 **4.4 Vehicle Weighing**

304 Contractor is solely responsible for ensuring accurate weighing of all materials entering and leaving the
305 Approved Disposal Facility.

306 **A. Facility Scales.** Contractor shall maintain State certified motor vehicle scales in accordance with
307 Applicable Law. All scales shall be linked to a centralized computer recording system at the
308 Approved Disposal Facility to record weights for all incoming and outgoing materials. Contractor
309 shall provide back-up generator(s) capable of supplying power to the scales in the event of a
310 power outage. Contractor shall promptly arrange for use of substitute portable scales should its
311 usual scales not be available for whatever reason. Pending substitution of portable scales,
312 Contractor shall as necessary estimate the tonnages of Solid Waste Delivered to the Approved
313 Disposal Facility, on the basis of Delivery vehicle volumes, tare weights, and/or other available
314 facility weight records. These estimates shall take the place of actual weights while scales are
315 inoperable, and shall be identified as estimates in electronic records and reporting. Contractor
316 shall upon City request, weigh and provide tare weights for City vehicles should City directly
317 Deliver Solid Waste for Disposal.

318 **B. Tare Weights for Franchise Collector Vehicles.** Within thirty (30) Days prior to the
319 Commencement Date, Contractor shall coordinate with the Franchise Collector to ensure that all
320 Collection vehicles used by Franchise Collector to Deliver Solid Waste to the Approved Disposal
321 Facility are weighed to determine unloaded ("tare") weights. Contractor and Franchise Collector
322 shall electronically record the tare weight, identify vehicle as Franchise Collector owned, and
323 provide a distinct vehicle identification number for each vehicle. Contractor shall provide City
324 with a report listing the vehicle tare weight information upon request. Contractor shall promptly
325 coordinate with Franchise Collector to weigh additional or replacement Collection vehicles prior
326 to Franchise Collector placing them into service. Contractor shall check tare weights at least
327 annually, or within fourteen (14) Days of a City request, and shall retare vehicles immediately
328 after any major maintenance service.

329 **C. Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at
330 least every twelve (12) months or upon City request.

331 **D. Records.** Contractor shall maintain computerized scale records and reports that provide
332 information including date of receipt, inbound time, inbound and outbound weights of vehicles,
333 vehicle identification number, as further provided in Section 6.1. Contractor shall also maintain
334 computerized scale records and reports providing historical vehicle tare weights for each vehicle
335 and the date and location for each tare weight recorded.

336 **E. Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video
337 cameras at the Approved Disposal Facility, Contractor shall make those videos available for City

review during the Facility's operating hours, upon request of the City, and shall provide the name of the driver of any particular load if available.

4.5 Drop-Off Services

Contractor has proposed an optional approach to and pricing for public drop-off services. The City may, in its sole discretion, include that service and associated cost in the scope of work for this Agreement any time prior to the commencement of services under this Agreement. If City decides to include that scope of work, the City and Contractor shall meet and confer to develop appropriate language and pricing and will include that language in an amendment to this Agreement.

ARTICLE 5. STANDARD OF PERFORMANCE

5.1 Days and Hours of Operation

A. Approved Disposal Facility. Contractor shall operate the Approved Disposal Facility for the receipt of the City's Solid Waste in accordance with the days and hours of operation set forth below. At a minimum, Contractor shall provide for Delivery of Solid Waste Monday through Friday from 6 a.m. to 4 p.m. and 8 a.m. to 4 p.m. on Saturdays. Approved Disposal Facility is permitted from 6am to 6pm. Should the City or Contractor request the facility to be open additional hours than current operating hours, Contractor shall accommodate the request provided it is within the parameters of the permitted hours. Contractor may not reduce the hours or total number of hours for Delivery of City's Solid Waste without prior written approval of the City, except for reductions required by a change in a Permit subsequent to the Commencement Date in which case Contractor shall make every effort to provide the City a minimum of sixty (60) Days written Notice of such an anticipated modification.

5.2 Facility Turnaround Times

Contractor shall maintain a maximum average vehicle turnaround time of twenty (20) minutes for Franchise Collector Delivery of Solid Waste to the Approved Disposal Facility. Maximum average vehicle turnaround time shall be the elapsed time from entering to leaving the Approved Disposal Facility property.

5.3 Rejection of Excluded Waste

A. Inspection Program and Training. Contractor shall develop a load inspection program that includes the following components:

(i) personnel and training; (ii) load checking activities; (iii) management of wastes; and, (iv) record keeping and emergency procedures. Contractor's load checking personnel shall be trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of prohibited materials; and, (iii) emergency notification and response procedures.

B. Inspection. Contractor shall use best industry practices to detect and reject Excluded Waste in a uniform manner and shall not knowingly Accept Excluded Waste at the Approved Disposal Facility. Contractor shall comply with the inspection procedure contained in its Permit requirements. Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable Law.

C. **Excluded Waste Handling and Costs.** Contractor shall arrange for or provide handling, transportation, and delivery to a facility permitted in accordance with Applicable Law of all Excluded Wastes detected at the Approved Disposal Facility. Contractor is solely responsible for making those arrangements or provisions and for all costs thereof, subject to the remedies available under Section 5.3.D below.

D. **Detection Prior to Acceptance.** If Contractor identifies Excluded Waste Delivered from the Service Area to the Approved Disposal Facility by the Franchised Collector prior to Acceptance, Contractor shall notify the Franchised Collector who shall collect, transport and recycle or dispose of that Excluded Waste and/or remediate any contamination resulting at the Approved Disposal Facility from it at Franchised Collector's expense.

E. **Detection Following Acceptance.** If Contractor identifies Excluded Waste Delivered from the Service Area to the Approved Disposal Facility by the Franchised Collector following Acceptance, and is able to verify such Excluded Waste was delivered by the Franchise Collector, Franchise Collector shall collect, transport and recycle or dispose of that Excluded Waste and/or remediate any contamination resulting at the Approved Disposal Facility at Franchise Collector's expense.

5.4 Personnel

A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. Contractor shall designate at least one (1) qualified employee as City's primary point of contact with Contractor who is principally responsible for Disposal operations and resolution of service requests and complaints who shall be available telephonically at all times Disposal operations are taking place.

B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

C. **Safety Training.** Contractor shall provide suitable operational and safety training consistent with Applicable Law for all of its employees who operate vehicles or equipment at, or in conjunction with the Approved Disposal Facility. Contractor shall train its employees to identify, and to not Accept Excluded Waste. Upon the City Contract Manager's request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

D. **Labor Agreements.** Contractor shall be solely responsible for its labor arrangements. Any labor agreements for staffing at the Approved Disposal Facility shall be included as Exhibit F and future modification shall be submitted to the City. The Contractor shall, as applicable provide full copies of the labor agreements including any and all amendments, extensions, renewals, or other forms of modification.

E. **Subcontractor Obligations.** Subcontractors shall be required to comply with the obligations stated in this Section 5.4.

5.5 Permits

A. **Securing Permits.** Contractor is solely responsible for obtaining and maintaining, at Contractor's sole cost, all Permits required under Applicable Law to perform the services required by this

Agreement. Contractor shall provide City copies of Permits and all documents submitted in application for said Permits for the Approved Disposal Facility within ten (10) Days of City request. In its monthly report or more frequently, as necessary, Contractor shall inform City of Contractor's status of securing the issuance, revision, modification, extension or renewal of Permits including those at its or any Affiliate's Alternative Disposal Facility. Contractor shall inform City at least 15 days prior to application, of its intent to apply for any Permit authorized or required under Applicable Law regarding services performed under this Agreement. Within ten (10) Days following City's request, Contractor shall provide the City with copies of any applications or other correspondence that the Contractor submits in connection with securing Permits.

- B. Compliance with Permits.** Contractor shall comply with all Permits or environmental documents, including any mitigation measures related to the operation and maintenance of the Approved Disposal Facility at no additional cost to the City. Contractor shall demonstrate compliance with the terms and conditions of Permits within ten (10) Days of City request. Contractor shall provide City with all documentation verifying compliance with Permit conditions that is provided to the permitting authority at the same time such is provided to the permitting authority. Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure to obtain Permits.

5.6 Safety

The Contractor shall conduct the operations of the Approved Disposal Facility in a safe manner, in accordance with Applicable Law and the insurance requirements of Section 9.2. In particular, Contractor shall construct and maintain all roads at the Approved Disposal Facility to which Franchise Collector Delivers Solid Waste as necessary and required for such vehicles to safely and efficiently access and use the Approved Disposal Facility. Contractor shall direct on-site traffic to appropriate unloading areas and provide a safe working environment for Approved Disposal Facility users, visitors, and employees. Contractor shall provide necessary signs and personnel to assist drivers to proper unloading areas. Contractor shall maintain all signs at the Approved Disposal Facility in a clean and readable condition. The Contractor shall provide and maintain signs for the convenience of Persons using the Approved Disposal Facility and to facilitate safe and efficient traffic flow at the Approved Disposal Facility.

5.7 Right to Enter Facility and Observe Operations

The City and its designated representative(s) reserve the right to enter, observe, and inspect and compliance test the Approved Disposal Facility during operations; meet with Approved Disposal Facility manager(s) or his or her representatives at any time, provided that the City and its representatives comply with Contractor's reasonable safety and security rules and do not interfere with operations at the Approved Disposal Facility. Contractor is obligated to allow entry of City staff or their designated representative(s) to the Approved Disposal Facility, and to allow for representatives to conduct observations, inspections, studies, or surveys.

Upon City direction, Contractor shall make Approved Disposal Facility personnel available to accompany City employees or representatives on inspections. Contractor shall ensure that its employees cooperate with the City and respond to the City's reasonable inquiries. Contractor shall facilitate observation and inspection at the Approved Disposal Facility upon three (3) Business Days of receiving a City request.

If the Approved Disposal Facility manager or his or her representative is not at the Approved Disposal Facility when the City or its designated representative(s) visit without prior announcement, staff of the

Approved Disposal Facility may limit the visit of the City or its designated representative to a portion of the Approved Disposal Facility property. In that event, Contractor shall arrange for City or its designated representative(s) to return for a visit of the complete facility within twenty four (24) hours of the City's visit.

5.8 Closure and Post-Closure of Approved Disposal Facility

Contractor shall safely operate, maintain, and manage (including fulfillment of State funding requirements) the Approved Disposal Facility in compliance with Applicable Law not only during the Term but also thereafter until and during the Approved Disposal Facility Closure and Post-Closure period(s). Contractor is solely responsible, operationally and financially, for: (i) The appropriate Closure and Post-Closure activities of the Approved Disposal Facility; and, (ii) The establishment and funding of any reserve funds required by Applicable Law for the purposes of providing funds for the payment of costs of Closure of the Approved Disposal Facility (or any cell within the Approved Disposal Facility) or Post-Closure activities relating to the Approved Disposal Facility. City shall be in no way responsible for paying any deficiencies in necessary or required reserves. In addition, City shall be in no way responsible should Contractor costs for Closure and Post-Closure relating to the Approved Disposal Facility exceed the amounts reserved by Contractor for that purpose. This obligation survives expiration or termination of this Agreement.

5.9 Alternative Facilities

- A. Purpose.** Contractor shall identify, and enter into arrangements with Alternative Disposal Facilities, whether an Affiliate or owned by a third-party prior to the Effective Date, and subject to review by the City upon City request in order to ensure uninterrupted service should Contractor for any reason be unable to provide services at the Approved Disposal Facility.
- B. Alternative Facility Arrangements.** Alternative Disposal Facility arrangements must ensure that Franchise Collector or Contractor, as applicable, can Deliver or Transport Solid Waste to an Alternative Disposal Facility within two (2) Business Days of Contractor or City notice of need to use such Alternative Disposal Facility. Contractor shall ensure that Alternative Disposal Facilities are able to accept Solid Waste on a continuous basis for no less than thirty (30) Days. Should Contractor use of the Alternative Disposal Facility exceed thirty (30) Days, City may require Contractor provide additional reasonable assurances of the Alternative Disposal Facility's ability to accept Solid Waste on an ongoing basis under the terms of this Agreement. Contractor may request, and City may at its discretion grant a change in an Alternative Disposal Facility owned and operated by Contractor or an Affiliate, or owned and/or operated by a third party with the third party's prior written consent.
- C. Contractor Responsibility for Additional Cost.** If Contractor is unable to, or chooses not to provide for Delivery of Solid Waste to the Approved Disposal Facility for reasons other than those specified in Section 10.7, Contractor shall provide immediate notice to City and Franchised Collector of its need to use an Alternative Facility, and shall be solely responsible for incremental differences in cost due to per-ton fees charged at the Alternative Facility and any additional transportation costs incurred in Delivering Solid Waste to the Approved Disposal Facility. Such added expense is not subject to adjustment as provided in Section 8.5.
- D. City Responsibility for Additional Cost.** If Contractor is unable to provide for Delivery of Solid Waste to the Approved Disposal Facility for a reason specified in Section 10.7, Contractor shall provide immediate notice to City and Franchised Collector of its need to use an Alternative Facility. City shall be responsible for incremental differences in cost due to per-ton fees charged

at the Alternative Facility and any additional transportation costs incurred in Delivering or Transport of Solid Waste to the Approved Disposal Facility, or for any added transport cost incurred by the Franchised Collector as provided in Article 8. Such added expense shall be subject to adjustment as provided in Section 8.5. .

- E. City Right to Terminate.** If, for any reason, the Contractor is unable to use the Approved Disposal Facility for an extended period of time, the City may, at its sole discretion, terminate this Agreement as provided in accordance with Section 10.2.

5.10 Delivery to Non-Approved Facilities Prohibited

Should Contractor Transport Solid Waste to a facility other than an Approved Facility or an Alternative Facility as provided in Section 5.9 without prior City approval, Contractor shall be subject to the penalty identified in Section 10.6.C for "Delivery to a Non-Approved Facility".

ARTICLE 6. RECORD KEEPING AND REPORTING

6.1 Record Keeping and Audit of Records

- A. Tons Delivered by Franchise Collector.** Contractor shall maintain daily electronic accounting of tons of Solid Waste Delivered to the Approved Disposal Facility by each incoming Franchise Collector vehicle at each then-current per-ton Rate.

- B. Other Records.** Contractor shall maintain accounting, statistical, operational, and other records related to its performance as necessary to provide reporting demonstrating compliance with this Agreement. The Contractor shall maintain complete financial statements and accounting records for operations under this Agreement sufficient to allow for independent verification of Contractor's ability to continue providing service through the Term.

- C. City Right to Examine.** Upon request, the Contractor shall allow the City Contract Manager to examine all data supporting Contractor's invoices for services provided under this Agreement. Such request shall be made at reasonable times and with reasonable notice. City reserves the right to produce any such documents examined to any State or local regulatory or permitting authority upon request.

- D. Extraordinary Adjustment.** In the event that an extraordinary Rate adjustment pursuant to Section 8.5, such records shall be subject to review in accordance with appropriate professional standards, and inspection, for the primary purpose of reviewing changes in costs to the Contractor attributable to the extraordinary Rate adjustment request, at any reasonable time by an independent third party. The selection of the independent third party as well as the scope of work for such review shall be approved in advance by the City Contract Manager. The independent reviewer shall provide any and all drafts of its review to the City and the Contractor. The Party requesting the extraordinary Rate adjustment review shall bear the cost of the review.

- E. Retention of Records.** Unless otherwise required in this Article, and as expressly provided in subsection G. below, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus three (3) years after its expiration or earlier termination. Records and data shall be in chronological and organized form and readily and easily interpreted. Upon request, any such records shall be retrieved in a timely manner by Contractor and made available to the City Contract Manager. Contractor shall maintain

adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. The Contractor shall provide, within one hundred twenty (120) days of a request by the City Contract Manager, complete independently audited financial statements from the corporate parent (Waste Management Inc.) for the prior calendar year, including its balance sheet, statement of revenues and expenses, and statement of changes in cash position, and provide such financial statements to the City Contract Manager.

- F. CERCLA Data.** City's ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation is a matter of great importance. For this reason, City regards as paramount its ability to prove where Collected Solid Waste is taken for Disposal. Contractor shall maintain records regarding quantities, on-site location, and timing of Disposal at the Approved Disposal Facility. This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

6.2 Report Submittal Requirements

Contractor shall submit monthly and quarterly reports within thirty (30) calendar days after the end of the calendar month or quarter, as applicable. Contractor shall submit annual reports no later than forty-five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual reports shall, at a minimum, include all data and information as described in Section 6.3, and shall be provided in Word and Excel.

Contractor may propose report formats. The format of each report shall be approved by the City Contract Manager and such approval shall not be unreasonably withheld. City Contract Manager may, from time to time during the Term, review and request changes to Contractor's report formats and content and Contractor shall not unreasonably deny such requests.

Contractor shall submit (via mail and e-mail) all reports to the City Contract Manager.

City reserves the right to require Contractor to provide additional reports or documents as City Contract Manager reasonably determines to be required for the administration of this Agreement or compliance with Applicable Law.

6.3 Report

Reports shall be submitted monthly and shall include, at a minimum the following:

- A. Total number of vehicle loads Delivered by Franchise Collector to the Approved Disposal Facility
- B. Totals tons for all vehicle loads Delivered by Franchise Collector to the Approved Disposal Facility
- C. Average tons per vehicle load Delivered by Franchise Collector to the Approved Disposal Facility
- D. Date, time, route number, Franchise Collector truck number, and reason for Contractor rejection of any Delivered vehicle loads

Each monthly report shall be formatted to show the previous months for the year-to-date with quarterly totals. The December report shall also discuss any issues, plans, and concerns related to the use of the Approved Disposal Facility during the past year and anticipated for the following year, including but not limited to, additional services provided or available, actual or anticipated need for use of Alternative Facilities, regulatory issue or concerns, permit and regulatory violations, etc.

ARTICLE 7. FEES

7.1 City Right to Establish Fees

City retains the right to establish fees on Disposal activities, and to adjust such fees during the Term of this Agreement. Such fees shall be established and adjusted as part of the governmental component of the then-applicable Per-Ton Rate as provided in Section 8.4 C.

7.2 Reserved

7.3 Payment Schedule and Late Fees

At the end of each month, during the Term of this Agreement, Contractor shall as applicable remit to City all fees established pursuant to Section 7.1 for the previously completed month as described in this Article. Such fees shall be remitted to City and sent or delivered to the City Contract Manager. If such remittance is not paid to City on or before the last day of the month, all fees due shall be subject to a delinquency penalty of two percent (2%), which attaches on the first day of delinquency. The delinquency penalty shall be increased an additional two percent (2%) for each additional month the payment remains delinquent.

Each monthly remittance to City shall be accompanied by a statement listing the amount of each fee paid; calculation of each fee; and, statement of Gross Receipts, by Customer Type for the period collected from all operations conducted or permitted by this Agreement. City Contract Manager may, at any time during the Term, request a detailed calculation of Gross Receipts which may include, but is not necessarily limited to, the number of Customers charged at each Service Level and Rate for each billing period.

City Contract Manager may, at any time during the Term, perform an audit of Contractor's payment of fees. Contractor shall cooperate with the City Contract Manager in any such audit. Should City or its agent perform this review and identify errors in payment of fees valued at one (1) percent or more of Gross Receipts, Contractor shall, in addition to compensating City for lost fees, reimburse the City's cost of the review.

ARTICLE 8. CONTRACTOR'S COMPENSATION AND RATE SETTING

8.1 General

Contractor's Compensation for performance of all its obligations under this Agreement shall be Per-Ton Rates, paid to the Contractor by the Franchised Collector in exchange for Disposal services provided. Contractor's Compensation provided for in this Article shall be the full, entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and

supplies, taxes, insurance, bonds, overhead, operations, profit, government fees and all expenses Contractor deems necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Nothing herein shall obligate City or Franchised Collector to provide any compensation to Contractor beyond Per-Ton Rates, and there shall be no obligation placed on the City General Fund.

If Contractor's actual costs, including any fees or payments due to City, are more than the Per-Ton Rates, Contractor shall not be compensated for the difference in actual costs and actual Per-Ton Rates except to the extent the City grants an extraordinary adjustment request pursuant to Section 8.5. If Contractor's actual costs are less than the actual Per-Ton Rates, Contractor shall retain the difference provided that Contractor has paid City fees pursuant to Article 7.

Under this Agreement, Contractor shall have the right and obligation to charge and collect from the Franchised Collector, Per-Ton Rates approved by the City, for Tonnage Delivered to the Approved Disposal Facility by the Franchised Collector. The Per-Ton Rates for Rate Period One are based on the Contractor's Proposal. Contractor's proposed Per-Ton Rates and operating assumptions for Rate Period One are presented in Exhibit G.

8.2 Remittances to Contractor

Each month, within five (5) working days after the last day of the preceding month, Contractor shall provide to the Franchised Collector an invoice detailing the total Tons Delivered to the Approved Disposal Facility from the City service area by the Franchised Collector, and the resulting moneys owed to Contractor, based on the then-current Per-Ton Rates. Within fifteen (15) working days after the last day of the preceding month, the Franchised Collector shall remit to Contractor payment each month equaling actual Tons of Solid Waste Delivered to the Approved Disposal Facility by the Franchised Collector, multiplied by the then-current Per-Ton Rate. Contractor shall cooperate with the Franchised Collector as needed to calculate and/or reconcile remittance amounts. Notwithstanding the above, the Contractor shall annually provide up to the equivalent of 500 cubic yards of Disposal at no charge for City materials, or for special events.

8.3 Per-Ton Rates

A. General. The City shall be responsible for approving Per-Ton Rates as described in this Article. Each Per-Ton Rate shall have two components: (i) the Contractor component; and (ii) the governmental component; the sum of which shall equal the total Per-Ton Rate. The "Contractor component" of the rates reflects the Contractor's compensation for the service provided under this Agreement, and the "government component" reflects government fees assessed for materials handled at the Approved Disposal Facility.

B. Rates for Rate Period One. Per-Ton Rates for Rate Period One were determined by Contractor and City and were approved by City resolution on or before the execution of the Agreement. The Per-Ton Rates for Rate Period One shall be effective from the Commencement Date of this Agreement through December 31, 2018. Per-Ton Rates for Rate Period One, and are as follows:

Contractor Component for Rate Period One: \$22.42 +

Governmental Component for Rate Period One: \$20.36 =

Total Per-Ton Rate for Rate Period One: \$42.78

8.4 Per-Ton Rate Adjustments

Per-Ton Rates for Rate Periods Two through Twenty shall be adjusted annually by CPI commencing January 1, 2019, in accordance with this Section 8.4.

A. Definitions. For the purposes of this Section 8.4, the following terms shall be defined as follows:

"Annual Percentage Change" means the Average Index Value of an index for the 12-month period ending June of the then-current Rate Period minus the Average Index Value for the 12-month period ending June of the most-recently completed Rate Period, divided by the Average Index Value for the 12-month period ending June of the most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

"Average Index Value" means the sum of the monthly index values during the 12-month period ending in June divided by 12 (in the case of indices published monthly) or the sum of the bi-monthly index values divided by 6 (in the case of indices published bi-monthly).

For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate Period 2, the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for July 2017 through June 2018) – (Average CPI for July 2016 through June 2017)] / (Average CPI for July 2016 through June 2017)].

B. Contractor Component. The Contractor component of the Approved Disposal Facility Per-Ton Rate shall be adjusted on: (i) the basis of one hundred percent (100%) of the Annual Percentage Change in the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index"), Series ID: CUURA422SA0, or (ii) five percent (5%), whichever is less.

If said CPI is discontinued, it shall be replaced by the CPI which most closely approximates the original category as determined by the U.S. Bureau of Labor Statistics.

C. Governmental Component. The governmental component of the Approved Disposal Facility Per-Ton Rate shall be adjusted upward or downward to reflect the actual changes in governmental fees and/or other elements of the governmental component, which are outside the control of Contractor and are not a factor in applying the five percent (5%) cap as provided in subsection B. Governmental fees for Rate Period One are as follows:

Fee Title	Fee Amount	Fee Basis	Governing Body	Tons Eligible for Fee in RP1
CA AB 939 (AB1220)	\$1.40	Per ton	State of California	100% of Delivered Tons
San Jose Business Tax	\$13.00	Per ton	City of San Jose	100% of Delivered Tons
County Planning Fee	\$0.78	Per ton	Santa Clara County	100% of Delivered Tons
Household Hazardous Waste	\$1.50	Per ton	Santa Clara County	100% of Delivered Tons
County AB 939	\$2.60	Per ton	Santa Clara County	
City of San Jose LEA	\$1.08	Per ton	City of San Jose	100% of Delivered Tons
Total	\$20.36	per ton	N/A	100% of Delivered Tons

688
689 **D. Total Adjusted Per-Ton Rates.** The Total Adjusted Per-Ton Rate shall be calculated as the sum of
690 the adjusted Contractor component, as calculated in subsection (A) above, and the adjusted
691 governmental component, as calculated in subsection (B) above.

692 **E. Per-Ton Rate Application.** On September 1, prior to the commencement of the Rate Period for
693 which Per-Ton Rates are to be determined (coming Rate Period), Contractor shall submit to the
694 City Contract Manager an application requesting the adjustment of Per-Ton Rates for the
695 coming Rate Year via mail and an electronic copy in Microsoft Excel format with all supporting
696 schedules, formulas, and calculations via email. For example, on September 1, 2019, the
697 Contractor shall submit its application for the adjustment of Maximum Rates to be effective
698 January 1, 2020 (i.e., Rate Period Three).

699 Such Application shall include the rate adjustment calculation in accordance with Section 8.4.A-
700 8.4.C; and a copy of the Per-Ton Rate schedule currently in effect.

701 City shall evaluate Contractor's application for mathematical accuracy and consistency with the
702 requirements of the Agreement, and shall have the ability to require changes to the application
703 prior to approval on the basis of the application's mathematical inaccuracy or failure to comply
704 with the procedures defined in the Agreement. Upon City Contract Manager's agreement that
705 the calculations are consistent with the requirements of this agreement and are mathematically
706 accurate, the Rate adjustment (if any) will be approved by City Contract Manager.

707 **8.5 Extraordinary Rate Adjustments**

708 It is understood that the Contractor accepts the risk for changes in cost of providing services and/or
709 quantities and composition of materials Delivered to the Approved Disposal Facility, and therefore the
710 extraordinary adjustments to Per-Ton Rates shall be limited to a Change in Law, a City-directed change
711 in scope or services, or City failure to ensure Delivery pursuant to Section 5.9.D. If a Change in Law or
712 City-directed change in scope (pursuant to Section 3.12) occurs, the Contractor may petition City for an
713 adjustment to the Per-Ton Rates in excess of the annual adjustment described in Section 8.4.

714 Contractor shall prepare an application for the extraordinary Per-Ton Rate adjustment calculating the
715 net financial effect on its operations (both increases and decreases of costs) resulting from the Change
716 in Law or City Directed Change in Scope, clearly identifying all assumptions related to such calculations
717 and providing the underlying documentation supporting the assumptions. The application shall provide
718 all information requested by City Contract Manager specific to the nature of the request being made.
719 City Contract Manager shall evaluate the application for reasonableness. As part of that review, the City
720 Contract Manager may request access to the financial statements and accounting records required to be
721 maintained by the Contractor (pursuant to Article 6) in order to determine the reasonableness of the
722 Contractor's application. Should the Contractor not grant such access, then the City may rely on the
723 Contractor's Proposal and other information available to it as the basis for making reasonable
724 assumptions regarding what those accounting and financial records would have shown and therefore
725 the reasonableness of the Contractor's application. Contractor shall pay all reasonable costs incurred by
726 the City, including the costs of outside accountants, attorneys, and/or consultants, in order to make a
727 determination of the reasonableness of the requested Rate adjustment.

728 In the event of such an application for extraordinary Per-Ton Rate adjustment, it is understood that the
729 City or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of
730 the requested adjustment

The Contractor may appeal the decision of the City Contract Manager to the City Council, which shall then make the final determination as to whether an adjustment to the Per-Ton Rates will be made, and if a Per-Ton Rate adjustment is permitted, the amount of the adjustment. With respect to an extraordinary Per-Ton Rate adjustment requested by the City Contract Manager, the City Council shall then make the final determination as to whether an adjustment to the Per-Ton Rates will be made, and if an adjustment is permitted, the amount of the adjustment.

ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND

9.1 Indemnification

A. General. Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the sole negligence or willful misconduct of City.

B. Excluded Waste. Contractor acknowledges that it is responsible for compliance during the entire Term of this Agreement with all Applicable Laws. Contractor shall not store, transport, use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, Contractor shall first obtain City's approval of any proposed investigatory or remedial action. Should Contractor fail at any time to promptly take such action, City may undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse City for all such expenses within thirty (30) calendar days of being billed for those expenses, and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provision of Section 7.3. These obligations are in addition to any defense and indemnity obligations that Contractor may have under this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement. Contractor's duties under this subsection extend to any claims arising from Solid Waste Disposal and all other services provided under the terms of this Agreement at the Approved Disposal Facility including, but not limited to, claims arising under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

C. Environmental Indemnity. Contractor shall defend, indemnify, and hold City harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded Waste.

D. Related to AB 939, AB 341, AB 1826, AB 1594 and SB 1016. Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by CalRecycle if the requirements

of AB 939, AB 341, AB 1826, AB 1594 or SB 1016 are not met by the City due to Contractor failure to submit scheduled reports or City-requested information in a timely manner.

- E. Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution (Commonly Proposition 218), which impacts the Rates for the Collection services established in accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the impact of such Change in Law on either Party's ability to perform under this Agreement.

If, at any time, a Rate adjustment determined to be appropriate by both City (which determination shall not be unreasonably withheld) and Contractor to compensate Contractor for increases in costs as described in this Agreement cannot be implemented for any reason, Contractor shall be granted the option to negotiate with City, in good faith, a reduction of services equal to the value of the Rate adjustment that cannot be implemented. If City and Contractor are unable to reach agreement about such a reduction in services, then Contractor may terminate this Agreement upon one hundred eighty (180) calendar days prior written notice to City, in which case the Contractor and City shall each be entitled to payment of amounts due for contract performance through the date of termination but otherwise will have no further obligation to one another pursuant to this Agreement after the date of such termination. Should a court of competent jurisdiction determine that the Contractor cannot charge and/or increase its Rates for charges related to Franchise Fees, other City fees or payments to City, and governmental fees and charges, Contractor shall reduce the Rates by a corresponding amount, providing said fees, Rates and/or charges disallowed by the court are not related to the cost of providing service hereunder and had been incorporated in the Rates charged by Contractor.

Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the Rates established for services provided under this Agreement. Moreover, at its election in its sole discretion, City may conduct a majority protest proceeding under California Constitution, Article XIID prior to granting any Rate adjustment. Any successful protest to a Rate adjustment shall be considered a Change in Law and will be addressed by the provisions of this Section.

This provision (i.e., Section 9.1) shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity from third parties.

- F. Survival of Provisions.** Section 9.1 will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity from third parties.

9.2 Insurance

- A. General Requirements.** Contractor/Subcontractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not less than the following coverage and limits of insurance:

- B. Coverages and Requirements.** During the Term of this Agreement, Contractor/Subcontractor shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

- Minimum Coverages. Insurance coverage shall be with limits not less than the following:

Commercial General Liability – \$10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

Automobile Liability – \$10,000,000 combined single limit per accident for bodily injury and property damage (include coverage for hired and non-owned vehicles).

Workers' Compensation – Statutory Limits/Employers' Liability - \$1,000,000/accident for bodily injury or disease.

Blanket Fidelity/Crime Policy – \$500,000 per event covering the City for any and all acts including, but not limited to, dishonesty, forgery, alteration, theft, disappearance, and destruction (inside or outside).

General Liability and Auto Liability Limits of Insurance may be satisfied by a combination of primary and umbrella or excess insurance.

2. Additional Insured. City, its officers, agents, employees, and volunteers shall be named as additional insured on all but the workers' compensation and Blanket Fidelity/Crime Policy coverages.

3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a "per occurrence" basis unless City's Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Contractor/Subcontractor changes insurance carriers Contractor/Subcontractor shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than three (3) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Contractor/Subcontractor changes to a new carrier prior to receipt of any payments due.

4. The Contractor/Subcontractor shall declare all aggregate limits on the required coverage are in place before commencing performance of this Agreement and are available throughout the performance of this Agreement.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice (10 days for non-payment) by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

5. The deductibles or self-insured retentions are for the account of Contractor/Subcontractor and shall be the sole responsibility of the Contractor/Subcontractor.

6. Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. "The City reserves the right to require complete copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications. The Contractor shall be allowed to redact information that it considers confidential".

856 The Certificate with endorsements and notices shall be mailed to: City of Milpitas,
857 Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.7.

858 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-
859 VII, unless otherwise approved by City Risk Manager.

860 8. The policies shall cover all activities of Contractor/Subcontractor, its officers, employees,
861 agents and volunteers arising out of or in connection with this Agreement.

862 9. For any claims relating to this Agreement, the Contractor/Subcontractor's insurance
863 coverage shall be primary, including as respects City, its officers, agents, employees, and
864 volunteers. Any insurance maintained by City shall apply in excess of, and not contribute
865 to, coverage provided by Contractor/Subcontractor's liability insurance policy.

866 10. The Contractor/Subcontractor shall waive, by evidenced endorsement to the policy, all
867 rights of subrogation against City, its officers, employees, agents, and volunteers.

868 **C. Endorsements.** Prior to the Effective Date pursuant to this Agreement,
869 Contractor/Subcontractor shall furnish City Contract Manager with certificates or original
870 endorsements reflecting coverage required by this Agreement. The certificates or endorsements
871 are to be signed by a Person authorized by that insurer to bind coverage on its behalf. All
872 certificates or endorsements are to be received by, and are subject to the approval of, City Risk
873 Manager before work commences.

874 **D. Renewals.** During the Term of this Agreement, Contractor/Subcontractor shall furnish City
875 Contract Manager with certificates or original endorsements reflecting renewals, changes in
876 insurance companies, and any other documents reflecting the maintenance of the required
877 coverage throughout the entire Term of this Agreement. The certificates or endorsements are to
878 be signed by a Person authorized by that insurer to bind coverage on its behalf.

879 **E. Workers' Compensation.** Contractor/Subcontractor shall provide workers' compensation
880 coverage as required by State law, and prior to the Effective Date pursuant to this Agreement,
881 Contractor/Subcontractor shall file the following statement with City.

882 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
883 to be insured against liability for workers' compensation or to undertake self-insurance in
884 accordance with the provisions of that code, and I will comply with such provisions before
885 commencing any services required by this Agreement."

886 *"Contractor agrees to include in their subcontract the same requirements and provisions of this*
887 *agreement including the indemnity and insurance requirements to the extent they apply to the scope of*
888 *the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and City*
889 *in the same manner and to the same extent as Contractor is bound to City under the Contract*
890 *Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A*
891 *copy of the Contract/Agreement and Insurance Provisions will be furnished to the Subcontractor. The*
892 *Contractor shall require all Subcontractor's to provide a valid certificate of insurance and the required*
893 *endorsements included in the agreement prior to commencement of any work and will provide proof of*
894 *compliance to the City."*

895 "The Person executing this Certificate on behalf of Contractor/Subcontractor affirmatively represents
896 that she/he has the requisite legal authority to do so on behalf of Contractor/Subcontractor, and both
897 the Person executing this Agreement on behalf of Contractor/Subcontractor and

898 Contractor/Subcontractor understand that City is relying on this representation in entering into this
899 Agreement."

900 **9.3 Performance Bond**

901 Within seven (7) calendar days of the City's notification to Contractor that the City has executed this
902 Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's
903 performance of its obligations under this Agreement and such bond shall be renewed annually if
904 necessary so that the performance bond is maintained at all times during the Term. The principal sum of
905 the bond shall be Two and One-Half Million Dollars (\$2,500,000), which shall be adjusted every three (3)
906 years, commencing with Rate Period Three, to equal three (3) months of the prior Rate Period's annual
907 Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety bonds
908 in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating
909 Guide, and that has a record of service and financial condition satisfactory to the City. The bond shall be
910 in the form attached as Exhibit E.

911 As an alternative to the performance bond required above, at City's option, Contractor may deposit with
912 City a fully prepaid irrevocable letter of credit for at least the duration of the Contract Year for which the
913 letter of credit is deposited. Such letter of credit shall be in the amount of Two and One-Half Million
914 Dollars (\$2,500,000). The form of the letter of credit and the issuer of the letter of credit are subject to
915 the approval of City's Risk Manager and the City Attorney. Nothing in this Section 9.3 shall in any way
916 obligate City to accept a letter of credit in lieu of the performance bond.

917 City shall have the right to draw against the faithful performance bond or the letter of credit in the event
918 of a breach or default of Contractor or the failure of Contractor to perform fully any obligation under
919 this Agreement. Within five (5) calendar days of receipt of notice from City, Contractor shall renew or
920 replace such sums of money as needed to bring the faithful performance bond or letter of credit
921 current.

922 **9.4 Guaranty**

923 Concurrently with execution of this Agreement, Contractor shall furnish a Guaranty of its performance
924 under this Agreement, in the form of Exhibit C, properly executed by Waste Management Holdings, Inc.,
925 a Delaware corporation which owns all of the issued and outstanding common stock of Contractor.

926 **ARTICLE 10. DEFAULT AND REMEDIES**

927 **10.1 Events of Default**

928 All provisions of the Agreement are considered material. Each of the following shall constitute an event
929 of default.

- 930 **A. Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the
931 City.
- 932 **B. Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts,
933 or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- 934 **C. Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the
935 Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

- 936 **D. Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having
937 authority over Contractor relative to this Agreement, provided that Contractor may contest any
938 such orders or filings by appropriate proceedings conducted in good faith, in which case no
939 breach or default of this Agreement shall be deemed to have occurred.
- 940 **E. Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement.
- 941 **F. Failure to Perform Direct Services.** Contractor ceases to provide Disposal services as required
942 under this Agreement for a period of two (2) consecutive calendar days or more, for any reason
943 within the control of Contractor.
- 944 **G. Failure to Pay or Report.** Contractor fails to make any payments to City required under this
945 Agreement or fails to provide City required information, reports, and/or records in a timely
946 manner as provided for in the Agreement.
- 947 **H. Acts or Omissions.** Any other act or omission by Contractor which violates the terms,
948 conditions, or requirements of this Agreement, AB 939 as it may be amended from time to time,
949 or any law, statute, ordinance, order, directive, rule, or regulation issued there under and which
950 is not corrected or remedied within the time set in the written notice of the violation or, if
951 Contractor cannot reasonably correct or remedy the breach within the time set forth in such
952 notice, if Contractor should fail to commence to correct or remedy such violation within the
953 time set forth in such notice and diligently effect such correction or remedy thereafter.
- 954 **I. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City
955 by Contractor in connection with or as an inducement to entering into this Agreement, or any
956 future amendment to this Agreement, which proves to be false or misleading in any material
957 respect as of the time such representation or disclosure is made, whether or not any such
958 representation or disclosure appears as part of this Agreement; and, any Contractor-provided
959 report containing a misstatement, misrepresentation, data manipulation, or an omission of fact
960 or content explicitly defined by the Agreement, excepting non-numerical typographical and
961 grammatical errors.
- 962 **J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of
963 Contractor's operating equipment, including without limits its equipment, maintenance or office
964 facilities, Approved Disposal Facility, or any part thereof.
- 965 **K. Suspension or Termination of Service.** There is any termination or suspension of the
966 transaction of business by Contractor related to this Agreement, including without limit, due to
967 labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other
968 concerted job action lasting more than two (2) calendar days.
- 969 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal
970 activity related directly or indirectly to performance of this Agreement or any other agreement
971 held with the City.
- 972 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the
973 expressed written approval of the City as provided in Section 12.6.
- 974 **N. Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a
975 proposal for new services or changes to services or fails to implement a change in service as
976 requested by the City as specified in Section 3.12.
- 977 **O. Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under
978 this Agreement.

City shall provide Contractor written notice of default within seven (7) calendar days of the occurrence of default or within seven (7) calendar days of the City's first knowledge of the Contractor's default, whichever occurs first.

10.2 Right to Terminate Upon Event of Default

Contractor shall be given ten (10) Business Days from written notification by City to cure any default which, in the City Contract Manager's sole opinion, creates a potential public health and safety threat.

Contractor shall be given ten (10) Business Days from written notification by City to cure any default arising under subsections C, E, F, I, J, and K in Section 10.1 provided, however, that the City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or a directly related type of breach/default within a twenty-four (24) month period and has failed to demonstrate that it implemented and maintained operational changes necessary to address the issue. With regard to defaults arising under subsection E, more than one NOV, or similar regulatory violation, within a 24 month period will not qualify as type of breach/default for which City may terminate without notice and cure opportunity, unless Contractor has failed to implement any remedial measures regarding such violations.

Contractor shall be given thirty (30) calendar days from written notification by City to cure any other default (which is not required to be cured within ten (10) Business Days).

Notwithstanding the above, City may suspend, and if necessary terminate the Agreement immediately upon awareness of serious public health or safety concerns; or if for any reason the Contractor is unable to use the Approved Disposal Facility for an extended period of time, the City may, at its sole discretion, terminate this Agreement.

10.3 City's Remedies in the Event of Default

In the event of Contractor's default, City maintains following remedies:

A. Waiver of Default. City may waive any event of default or may waive Contractor's requirement to cure a default event if City determines that such waiver would be in the best interest of the City. City's waiver of an event of default is not a waiver of future events of default that may have the same or similar conditions.

B. Suspension of Contractor's Obligation. City may suspend Contractor's performance of its obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until such time the Contractor can provide assurance of performance in accordance with Section 10.8.

C. Liquidated Damages. City may assess Liquidated Damages for Contractor's failure to meet specific performance standards pursuant to Section 10.6.

D. Termination. In the event that Contractor should default and subject to the right of the Contractor to cure, in the performance of any provisions of this contract, and the default is not cured for any default within in ten (10) calendar days if the default creates a potential public health and safety threat or arises under Section 10.1.C., E, F, I, J, or K, or otherwise thirty (30) calendar days after receipt of written notice of default from the City, then the City may, at its option, terminate this Agreement and/or hold a hearing at its City Council meeting to determine whether this Agreement should be terminated. In the event City decides to terminate this

Agreement, the City shall serve twenty (20) calendar days written notice of its intention to terminate upon Contractor. In the event City exercises its right to terminate this Agreement, the City may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

Contractor shall not be entitled to any Per-Ton compensation for services authorized hereunder from and after the date of termination.

- E. Other Available Remedies.** City's election of one (1) or more remedies described herein shall not limit the City from any and all other remedies at law and in equity including injunctive relief, etc.

10.4 Possession of Records upon Termination

In the event of termination for an event of default, the Contractor shall furnish City Contract Manager with immediate access to all of its business records, including without limitation, proprietary Contractor computer systems, related to its Disposal operations.

10.5 City's Remedies Cumulative; Specific Performance

City's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's records under Section 10.4 are not exclusive, and City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which City may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service; the lead time required to effect alternative service; and, the rights granted by City to the Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief (including but not limited to specific performance).

10.6 Performance Standards and Liquidated Damages

A. General. The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Disposal services are of utmost importance

to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established below in Section 10.6.C of this Agreement and the Liquidated Damage amounts therein represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in Section 10.6.C.

Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and/or non-performance. City or Contractor may, within ten (10) Business Days after issuing the notice, request a meeting with the other party. The parties may present evidence of performance or non-performance in writing and through testimony of its employees and others relevant to the incident(s).. City Contract Manager will provide Contractor with a written explanation of their determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 10.6. The decision of City Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

C. Two-Phase Performance Management. The Parties desire to minimize the time and cost involved in monitoring Contractor's performance under this Agreement, particularly with regard to the assessment of Liquidated Damages. This Section 10.6.C identifies each "Performance Area" for which the City desires to establish performance standards for this Agreement. Contractor's performance within each "Performance Area" shall be primarily monitored using the "Performance Indicator" described for each. The City shall not assess Liquidated Damages for the "Specific Performance Measures" identified below unless Contractor fails to meet the minimum standard for the "Performance Indicator" within the same "Performance Area".

1. Performance Area No. 1: Reporting

Overall Performance Indicator: Contractor's reporting shall be considered acceptable if Reports required under Section 6.3.C. and record requests allowed under Article 6 to this Agreement are received, complete, and accurate within seven (7) calendar days after the date due or date of requested. If Contractor fails to meet this level of performance, City may assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Late Report	Each occurrence of a report, as required under Section 6.3 to this Agreement, being submitted after the due date. Reports shall be considered late until they are submitted in a complete and accurate format.	Less than seven (7) calendar days after report due date	\$250/Day
Failure to Maintain or Provide Access to Records	Each occurrence of City Contract Manager requesting information required to be maintained by Contractor where Contractor fails to provide such information.	Less than seven (7) calendar days after report due date	\$500/Event
Misleading/ Inaccurate Reporting	Each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under or in regard to this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.	No acceptable failure level	\$500/Event

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2. Performance Area No. 2: Facilities

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Overall Performance Indicator: Contractor's performance relative to facilities shall be considered acceptable when one hundred percent (100%) of Delivered Solid Waste is Accepted, or rejected for reasonable cause. If Contractor fails to meet this level of performance, City may assess Liquidated Damages for the specific performance measures identified in the following table.

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Contractor Failure to Accept Solid Waste Delivered by Franchise Collector	Inability of Contractor to Accept Solid Waste at the Approved Disposal Facility for any reason other than an event of force majeure, and without prior arrangement for use of an Alternative Facility.	No acceptable failure level	\$500/ton

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D. Amount. City may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in this Section 10.6, subject to annual adjustment described below.

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E. Timing of Payment. Contractor shall pay any Liquidated Damages assessed by City within ten (10) Business Days of the date the Liquidated Damages are assessed, or within 10 days after the decision of the City Contract Manager following the meeting described in Section 10.6(B), whichever is later. However, such payment shall be made no later than ninety (90) days following City assessment. If they are not paid within the ten (10) Business Day period, City may proceed against the performance bond required by the Agreement, order the termination of the rights granted by this Agreement, or all of the above.

10.7 Excuse from Performance

The Parties shall be excused from performing their respective obligations hereunder and from any obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at a third party over whom Contractor has no control, the inability of Contractor to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make reasonable accommodations with respect to point of Delivery, time of Acceptance, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to perform Disposal services shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in performing Disposal services at different times and in different locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, or a subsidiary, the Contractor shall not be excused from performance, but may with City approval direct Solid Waste to an Alternative Facility as provided in Section 5.9.

The Party claiming excuse from performance shall, within two (2) calendar days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against each other for any damages sustained thereby.

The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more of the events described in this Article shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) Business Days' notice to Contractor, in which case the provisions of Section 10.4 shall apply.

10.8 Right to Demand Assurances of Performance

The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those members of the public residing or doing business within City who will be adversely affected by interrupted waste management service, that there be no material interruption in services provided under this Agreement.

If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action (except to the extent excused under Section 10.7) ; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely

and proper performance of this Agreement, in such form and substance as City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default for purposes of Section 10.1.

ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this Article.

11.1 Contractor's Corporate Status

Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State. It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

11.2 Contractor's Corporate Authorization

Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

11.3 Agreement Will Not Cause Breach

To the best of Contractor's and City's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by either Party of their obligations hereunder does not conflict with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Contractor or City is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default hereunder.

11.4 No Litigation

To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against either Party wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- A. Materially adversely affect the performance by Party of its obligations hereunder;
- B. Adversely affect the validity or enforceability of this Agreement; or,
- C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

1196 **11.5 No Adverse Judicial Decisions**

1197 To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial
1198 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

1199 **11.6 No Legal Prohibition**

1200 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in
1201 effect on the date that Party signed this Agreement that would prohibit the performance of either their
1202 obligations under this Agreement and the transactions contemplated hereby.

1203 **11.7 Contractor's Ability to Perform**

1204 Contractor possesses the business, professional, and technical expertise to perform all services,
1205 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.
1206 Contractor possesses the ability to secure equipment, facility, and employee resources required to
1207 perform its obligations under this Agreement.

1208 **ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES**

1209 **12.1 Relationship of Parties**

1210 The Parties intend that Contractor shall perform the services required by this Agreement as an
1211 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner
1212 or agent of, or joint venturer with, City. No employee or agent of Contractor shall be, or shall be deemed
1213 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and
1214 means of performing services under this Agreement, except as expressly provided herein. Contractor
1215 shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors and
1216 agents. Neither Contractor nor its officers, employees, Subcontractors, or agents shall obtain any rights
1217 to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City
1218 employees by virtue of their employment with City.

1219 **12.2 Compliance with Law**

1220 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the
1221 United States, the State, County of Santa Clara, and City and with all applicable regulations promulgated
1222 by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may
1223 be enacted, issued or amended during the Term.

1224 **12.3 Governing Law**

1225 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
1226 State of California.

1227 **12.4 Jurisdiction**

1228 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1229 courts of Santa Clara County in the State of California, which shall have exclusive jurisdiction over such
1230 lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed
1231 in Santa Clara County.

12.5 Binding on Successors

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the Parties.

12.6 Assignment

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (i) Contractor's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, and (ii) Contractor's and the Guarantor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

A. City Consent Required. Contractor shall not assign its rights or delegate or otherwise transfer any or all of its obligations under this Agreement to any other Person without the prior written consent of City which may be withheld with or without cause at City's sole discretion. City may refuse to consent to a proposed assignment unless it is satisfied that the proposed assignee is ready, willing and able to provide services in a manner equal to or better than Contractor. Any assignment made in violation of this Section 12.6.A shall be void and the attempted assignment shall constitute a Contractor default.

B. Assignment Defined. For the purpose of this Section, "assignment" shall include, but not be limited to, (i) a documentary assignment of Contractor's interest in, and obligations under, this Agreement; (ii) a sale, exchange or other transfer to a third Party of substantially all of Contractor's assets dedicated to service under this Agreement; (iii) a sale, exchange or other transfer of over thirty percent (30%) of outstanding common stock of Contractor to a Person who is not a shareholder as of the Effective Date; (iv) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (v) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (vi) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

C. Consent Requirements. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

1. Contractor shall pay City its reasonable expenses for attorneys' fees, consultants' fees and other costs of investigation necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. With its written request for consideration of assignment, Contractor shall submit a non-refundable deposit to City in the amount of \$150,000 to provide City funding for its review of the assignment;
2. Contractor shall be granted no opportunity to review or approve proposed agents of the City associated with assignment process;

- 1274 3. Contractor shall furnish City with audited financial statements of the proposed assignee's
1275 operations for the immediately preceding three (3) operating years. City, following review
1276 of financial health of the assignee, may require provision of additional performance surety,
1277 insurance, or secured Closure/Post-Closure funding;
- 1278 4. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at
1279 least ten (10) years of Solid Waste Disposal management experience on a scale equal to or
1280 exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that
1281 in the last five (5) years, the proposed assignee has not been the subject of any
1282 administrative or judicial proceedings initiated by a federal, State or local agency having
1283 jurisdiction over its operations due to an alleged failure to comply with federal, State or
1284 local laws or that the proposed assignee has provided City with a complete list of such
1285 proceedings and their status; (iii) that the proposed assignee conducts its operations in a
1286 safe and environmentally conscientious manner; (iv) that the proposed assignee conducts
1287 its operations in accordance with sound Solid Waste management practices in full
1288 compliance with all federal, State and local laws regulating the Disposal of Solid Waste and
1289 all Environmental Laws; (v) of any other information required by City to ensure the
1290 proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective
1291 manner; and
- 1292 5. Any permitted assignee must assume Contractor's responsibilities under this Agreement.
- 1293 6. Should City consent to the assignment, Contractor shall make an assignment payment to
1294 the City in the amount of 2% of the annual Gross Receipts for the services provided under
1295 this Agreement for the most recently completed calendar year.
- 1296
- 1297 **D. No Obligation to Consider.** City will not be obligated to consider a proposed assignment if
1298 Contractor is in default.
- 1299 **E. Retention of Records.** Assignment of the Agreement in no way relieves Contractor of its record
1300 retention responsibilities under Section 6.1, nor of any and all other Contractor obligations that
1301 survive the Agreement.

1302 **12.7 No Third Party Beneficiaries**

1303 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
1304 party to bring an action to enforce any of its terms.

1305 **12.8 Waiver**

1306 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
1307 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach
1308 of violation of the same or any other provision. The subsequent acceptance by either Party of any
1309 monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or
1310 concurrent breach or violation by the other Party of any provision of this Agreement.

1311 **12.9 Notice Procedures**

1312 All notices, demands, requests, proposals, approvals, consents, and other communications, which this
1313 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally

1314 delivered to a representative of the Parties at the address below or deposited in the United States mail,
1315 first class postage prepaid, addressed as follows:

1316 A. If communications to the City are notices of legal action or request for public information, such
1317 communication shall be directed to:

1318 City Clerk
1319 City of Milpitas
1320 City Hall
1321 455 E. Calaveras Blvd.
1322 Milpitas, CA 95035
1323
1324

1325 With a copy to the Director of Engineering/City Engineer at the address below.
1326

1327 All other communications shall be directed to:

1328 Director of Engineering/City Engineer
1329 City of Milpitas
1330 City Hall
1331 455 E. Calaveras Blvd.
1332 Milpitas, CA 95035
1333

1334 If to Contractor:

1335 District Manager
1336 Guadalupe Landfill and C & D Recovery Facility
1337 15999 Guadalupe Mines Road
1338 San Jose, CA 95120

1339 B. The address to which communications may be delivered may be changed from time to time by a
1340 notice given in accordance with this Section. Notice shall be deemed given on the day it is
1341 personally delivered or, if mailed, three (3) calendar days from the date it is deposited in the
1342 mail.

1343 **12.10 Representatives of the Parties**

1344 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken
1345 by City except as provided below. The City may delegate, in writing, authority to the City Contract
1346 Manager and/or to other City officials and may permit such officials, in turn, to delegate in writing some
1347 or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such
1348 delegates if they are within the scope of the authority properly delegated to them.

1349 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as
1350 the representative of the Contractor in all matters related to the Agreement and shall inform City in
1351 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City
1352 may rely upon action taken by such designated representative as actions of the Contractor unless they
1353 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

ARTICLE 13. MISCELLANEOUS AGREEMENTS

13.1 Entire Agreement

This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be construed against any Party on the basis of drafting. This Agreement may be amended only by an agreement in writing, signed by each of the Parties hereto.

13.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

13.3 References to Laws

All references in this Agreement to laws and regulations shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided herein.

13.4 Amendments

This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

13.5 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

13.6 Counterparts

This Agreement may be executed in counterparts, each of which shall be considered an original.

13.7 Exhibits

Each of the Exhibits identified as Exhibit "A" through "H" is attached hereto and incorporated herein and made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and the terms of an Exhibit, the terms of this Agreement shall control.

1381 IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first
1382 above written.

1383

1384

1385

1386 ATTEST:

1387

1388 City CLERK

City of Milpitas ("City")

1389

1390

1391 By _____

By _____

1392 City Clerk

City Manager

1393

1394 Date: _____

Date: _____

1395

1396

1397 APPROVED AS TO FORM:

1398

1399

1400

1401 _____
City Attorney

1402

1403 Date: _____

1404

1405

1406

1407

1408 APPROVED AS TO FORM:

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1410

1411 Waste Management of South Bay

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1413

1414 Contractor Attorney

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1419

1420 Date: 3-4-16

1421

By: _____

Harry Skolnick (Name)

President (Title)

Date: 3-4-2016

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EXHIBIT A: DEFINITIONS

1 For purposes of this Agreement, unless a different meaning is clearly required, the following words and
2 phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be
3 capitalized throughout this Agreement:

4 **"AB 341"** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro,
5 AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced
6 from time to time.

7 **"AB 939"** means the California Integrated Waste Management Act of 1989 (Division 30 of the California
8 Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented,
9 superseded, and replaced from time to time.

10 **"AB 1594"** means the 2014 act to amend Sections 40507 and 41781.3 of the Public Resources Code,
11 relating to solid waste (Chapter 719, Statutes of 2014 [Williams, AB 1594]), also commonly referred to as
12 "AB 1594", as amended, supplemented, superseded, and replaced from time to time.

13 **"AB 1826"** means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 [Chesbro, AB
14 1826]), also commonly referred to as "AB 1826", as amended, supplemented, superseded, and replaced
15 from time to time.

16 **"Accept" or "Acceptance"** (or other variations thereof) means the transfer of ownership of Solid Waste
17 from the Franchise Collector to the Contractor upon Delivery to the Approved Disposal Facility.

18 **"Affiliate"** means all businesses (including corporations, limited and general partnerships and sole
19 proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect
20 Ownership interest or common management. They shall be deemed to be "Affiliated with" Contractor
21 and included within the term "Affiliates" as used herein. An Affiliate shall include: (i) a business in which
22 Contractor has a direct or indirect Ownership interest, (ii) a business, which has a direct or indirect
23 Ownership interest in Contractor and/or (iii) a business, which is also Owned, controlled or managed by
24 any business or individual which has a direct or indirect Ownership interest in Contractor. For the
25 purposes of this definition, "Ownership" means ownership as defined in the constructive ownership
26 provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here,
27 provided that ten percent (10%) shall be substituted for fifty percent (50%) in Section 318(a)(2)(C) and in
28 Section 318(a)(3)(C) thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of determining
29 ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership
30 interest of less than ten percent (10%) shall be disregarded and percentage interests shall be
31 determined on the basis of the percentage of voting interest of value which the ownership interest
32 represents.

33 **"Agreement"** means this Agreement between City and Contractor, including all exhibits, and any future
34 amendments hereto.

35 **"Alternative Daily Cover (ADC)"** means CalRecycle-approved materials other than soil used as a
36 temporary overlay on an exposed landfill face. Generally, these materials must be processed so that
37 they do not allow gaps in the face surface, which would provide breeding grounds for insects and
38 vermin.

EXHIBIT A: DEFINITIONS

39 **"Alternative Facility(ies)"** means the Disposal facility proposed by Contractor and approved by City for
40 use in the event that the Approved Disposal Facility is unavailable for use. As of the Effective Date, the
41 Alternative Facility is the Kirby Canyon Landfill, located at 910 Coyote Creek Golf Drive, Morgan Hill, CA
42 95037.

43 **"Alternative Intermediate Cover (AIC)"** means CalRecycle-approved materials other than soil used at a
44 landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred
45 eighty (180) days. Generally, these materials must be processed so that they do not allow gaps in the
46 face surface, which would provide breeding grounds for insects and vermin.

47 **"Applicable Law"** means all Federal, State, County, and local laws, regulations, rules, orders, judgments,
48 degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over
49 the Disposal of Solid Waste that are in force on the Effective Date and as may be enacted, issued or
50 amended during the Term of this Agreement.

51 **"Approved Disposal Facility"** means the Guadalupe Landfill and C&D Recovery Facility at 15999
52 Guadalupe Mines Road, San Jose, CA 95120, which is owned and operated by the USA Waste of
53 California, Inc.

54 **"Beneficial Reuse"** means use of material for beneficial reuse which shall include, but not be limited to,
55 the following: Alternative Daily Cover, Alternative Intermediate Cover, final cover foundation layer, liner
56 operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather
57 operations pads and access roads, and soil amendments for erosion control and landscaping.

58 **"Business Days"** mean days during which the City offices are open to do business with the public.

59 **"Change in Law"** means any of the following events or conditions that has a material and adverse effect
60 on the performance by the Parties of their respective obligations under this Agreement (except for
61 payment obligations, or City Diversion decisions or obligations that have the effect of reducing the
62 relative tonnages of Solid Waste available for Disposal):

63 a. The enactment, adoption, promulgation, issuance, modification, or written change in
64 administrative or judicial interpretation of any Applicable Law on or after the Effective Date that
65 Contractor can demonstrate, through the process described in Section 8.5, increases Contractor's cost of
66 performing under this Agreement; or,

67 b. The order or judgment of any governmental body, on or after the Effective Date, to the extent
68 such order or judgment is not the result of willful or negligent action, error or omission or lack of
69 reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in
70 Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such
71 order or judgment shall not constitute or be construed as such a willful or negligent action, error or
72 omission or lack of reasonable diligence.

73 **"City"** means the City of Milpitas, a municipal corporation, and all the territory lying within the
74 municipal boundaries of the City as presently existing or as such boundaries may be modified during the
75 Term.

EXHIBIT A: DEFINITIONS

76 **"City Contract Manager"** means the City representative specified in Section 3.9, who is the main point
77 of contact for this Agreement.

78 **"Closure"** means the mandated activities stipulated in Applicable Law and required to be conducted
79 following conclusion of Disposal activities at the Approved Disposal Facility or any portion of the
80 Approved Disposal Facility such that Post-Closure activities can commence, including but not limited to
81 all planning, design, regulatory approvals, plan implementation, construction and monitoring.

82 **"Collect or Collection (or any variation thereof)"** means the action of the Franchise Collector in
83 collecting Solid Waste from within the Service Area for Delivery to the Approved Disposal Facility.

84 **"Commencement Date"** means the date specified in Section 2.1 on which Contractor shall begin to
85 provide the Disposal services required by this Agreement.

86 **"Composting or Compost (or any variation thereof)"** includes a controlled biological decomposition of
87 organic materials yielding a safe and nuisance free compost product.

88 **"Construction and Demolition Debris (C&D)"** includes discarded building materials, packaging, debris,
89 and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any
90 pavements, excavation projects, houses, commercial buildings, or other structures, excluding Excluded
91 Waste.

92 **"Container(s)"** mean Bins, Carts, Compactors, and Drop Boxes.

93 **"Contractor"** means Waste Management of South Bay organized and operating under the laws of the
94 State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries,
95 and Subcontractors.

96 **"Contractor's Compensation"** means the monetary compensation received by Contractor in return for
97 providing services in accordance with this Agreement as described in Article 8.

98 **"Contractor's Proposal"** means the proposal submitted to City by Contractor on October 27, 2015 for
99 provision of Solid Waste Disposal services and certain supplemental written materials, which are
100 included as Exhibit I to this Agreement and are incorporated by reference.

101 **"County"** means the County of Santa Clara.

103 **"Delivered" or "Delivery"** (or other variations thereof) means the action of the Franchise Collector in
104 bringing Solid Waste to the Approved Disposal Facility for Disposal.

105 **"Designated Waste"** means non-Hazardous Waste which may pose special Disposal problems because
106 of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal
107 Facilities or Class III Disposal Facilities pursuant to a variance issued by the California Department of
108 Health Services. Designated Waste consists of those substances classified as Designated Waste by the
109 State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

EXHIBIT A: DEFINITIONS

- 110 **"Disposal or Dispose** (or any variation thereof)" means the final disposition of Solid Waste intended for
111 placement in a Disposal Facility.
- 112 **"Disposal Facility"** means a facility for ultimate Disposal of Solid Waste.
- 113 **"Diversion** (or any variation thereof)" means activities which reduce or eliminate the amount of Solid
114 Waste to be Disposed including, but not limited to, Recycling and Composting of Source Separated
115 Materials and Processing of Solid Waste.
- 116 **"Effective Date"** means the date on which the latter of the two Parties signs this Agreement.
- 117 **"Excluded Waste"** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste,
118 volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that
119 Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or
120 Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be
121 Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a
122 significant risk to human health or the environment, cause a nuisance or otherwise create or expose
123 Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste
124 of a type and amount normally found in residential Solid Waste after implementation of programs for
125 the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with
126 Sections 41500 and 41802 of the California Public Resources Code.
- 127 **"E-Waste"** means discarded electronic equipment including, but not limited to, televisions, computer
128 monitors, central processing units (CPUs), laptop computers, computer peripherals (including external
129 hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo
130 speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic
131 devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous
132 Substances and thus require special handling, Processing, or Disposal.
- 133 **"Federal"** means belonging to or pertaining to the Federal government of the United States.
- 134 **"Food Scraps"** means those food-related discarded materials that will decompose and/or putrefy
135 including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or
136 results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper that is
137 contaminated with Food Scraps; and, (iv) fruit waste, grain waste, dairy waste, meat, and fish waste.
138 Food Scraps are a subset of Organic Materials.
- 139 **"Franchised Collector"** means [REDACTED] that entered into an exclusive franchise agreement
140 with the City, entitled "Franchise Agreement between the City of Milpitas and [REDACTED] for Collection
141 and Processing of Discarded Materials," dated [REDACTED]
- 142 **"Generator"** means any Person whose act or process produces Solid Waste as defined in the Public
143 Resources Code, or whose act first causes Solid Waste to become subject to regulation.
- 144 **"Gross Receipts"** shall mean total cash receipts collected from Customers by the Contractor for the
145 provision of services pursuant to this Agreement, without any deductions.

EXHIBIT A: DEFINITIONS

146 **"Hazardous Substance"** means any of the following: (a) any substances defined, regulated or listed
147 (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic
148 waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the
149 environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and
150 Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials
151 Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC
152 §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code
153 §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii)
154 California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to
155 such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous
156 or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated
157 under any other Applicable Law currently existing or hereinafter enacted, including, without limitation,
158 friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products,
159 and by-products.

160 **"Hazardous Waste"** means all substances defined as Hazardous Waste, acutely Hazardous Waste, or
161 extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or
162 in the future amendments to or recodifications of such statutes or identified and listed as Hazardous
163 Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource
164 Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and
165 regulations promulgated thereunder.

166 **"Holidays"** are defined as New Year's Day, Thanksgiving Day, and Christmas Day.

167 **"Household Hazardous Waste" or "HHW"** means Hazardous Waste generated at residential Premises
168 within the City. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, auto
169 products such as old fuel, used motor oil, used oil filter, batteries, household batteries, fluorescent
170 bulbs, tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes,
171 and lancets.

172 **"Infectious Waste"** means biomedical waste generated at hospitals, public or private medical clinics,
173 dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary
174 facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5
175 as may be amended from time to time.

176 **"Liquidated Damages"** means the amounts due by Contractor for failure to meet specific quantifiable
177 standards of performance as described in Section 10.6.

178 **"Organic Materials"** means those Yard Trimmings and Food Scraps which are placed by Generators for
179 Collection together or separately and that are specifically accepted at the Approved Organic Materials
180 Processing Facility. No Discarded Material shall be considered to be Organic Materials, however, unless
181 it is separated from Solid Waste, Recyclable Material, and C&D.

182 **"Owner"** means the Person(s) holding legal title to real property and/or any improvements thereon, and
183 shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

184 **"Party or Parties"** refers to the City and Contractor, individually or together.

EXHIBIT A: DEFINITIONS

185 **"Permits"** means all federal, State, county, City, other local and any other governmental unit permits,
186 orders, licenses, approvals, authorizations, consents and entitlements that are required under
187 Applicable Law to be obtained or maintained by any Person with respect to services performed under
188 this Agreement, as renewed or amended from time to time.

189 **"Person(s)"** means any individual, firm, association, organization, partnership, corporation, trust, joint
190 venture, or public entity.

191 **"Per-Ton Rate"** means the per-unit compensation owed Contractor by City for each ton of Solid Waste
192 Delivered by the Franchise Collector as payment for all services provided under this Agreement, and as
193 adjusted annually as provided in Article 8.

194 **"Post-Closure"** means the mandated activities stipulated in Applicable Law requiring long-term
195 monitoring and maintenance of the Approved Disposal Facility, or of any portion of the Approved
196 Disposal Facility that has been fully Closed in compliance with Applicable Law.

197 **"Processing"** means to prepare, treat, or convert through some special method.

198 **"Rate Period"** means a twelve (12) month period, commencing January 1 and concluding December 31,
199 except that Rate Period One begins September 6, 2017 and ends December 31, 2018.

200 **"Recyclable Materials"** means those discarded materials that: the Generators set out in Recyclables
201 Containers for Collection for the purpose of Recycling by the Franchise Collector.. No discarded
202 materials shall be considered Recyclable Materials unless such material is separated from Solid Waste,
203 Organic Materials, and C&D. Recyclable Materials shall include, but not be limited to: newspaper
204 (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer
205 paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons,
206 telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe
207 boxes, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic
208 coating, paper contaminated with food, wax paper, foil-line paper, Tyvex non-tearing paper envelopes);
209 chipboard; corrugated cardboard; glass containers of any color (including brown, clear, and green glass
210 bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin or
211 bi-metal cans; mixed plastics such as plastic containers (no. 1 to 7); and, bottles including containers
212 made of HDPE, LDPE, or PET.

213 **"Recycle or Recycling"** means the process of sorting, cleansing, treating, and reconstituting at a
214 Processing Facility materials that would otherwise be Disposed of at a landfill for the purpose of
215 returning such materials to the economy in the form of raw materials for new, reused, or reconstituted
216 products.

217 **"Residue"** means those materials which, after Processing, are Disposed rather than Recycled due to
218 either the lack of markets for materials or the inability of the Processing Facility to capture and recover
219 the materials.

220 **"SB 1016"** means Chapter 343, Statutes of 2008, Wiggins, also commonly referred to as "SB 1016", as
221 amended, supplemented, superseded, and replaced from time to time.

EXHIBIT A: DEFINITIONS

222 **"Service Area"** means the physical area encompassed by the jurisdiction of the City, in which the
223 Franchised Collector provides Collection service.

224 **"Solid Waste"** means solid waste as defined in California Public Resources Code, Division 30, Part 1,
225 Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste
226 are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials,
227 and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de
228 minimis volumes or concentrations of waste of a type and amount normally found in residential Solid
229 Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of
230 Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public
231 Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only
232 when such materials are included for Collection in a Solid Waste Container, or when Solid Waste is
233 directed by City for Processing. For the purposes of this Agreement, Solid Waste is inclusive of street
234 sweeping debris intended for Disposal.

235 **"Source Separated"** means the segregation, by the Generator, of materials designated for separate
236 Collection for some form of Recycling, Composting, recovery, or reuse.

237 **"State"** means the State of California.

238 **"Subcontractor"** means a Party, approved by the City who has entered into a contract, express or
239 implied, with the Contractor for the performance of an act that is necessary for the Contractor's
240 fulfillment of its obligations for providing service under this Agreement. Vendors providing materials
241 and supplies to Contractor shall not be considered Subcontractors.

242 **"Term"** means the Term of this Agreement, including extension periods if granted, as provided for in
243 Article 2.

244 **"Ton" or "Tonnage"** means a unit of measure for weight equivalent to two thousand (2,000) standard
245 pounds where each pound contains sixteen (16) ounces.

246 **"Universal Waste (U-Waste)"** means all wastes as defined by Title 22, Subsections 66273.1 through
247 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries,
248 fluorescent light bulbs, mercury switches, and E-Waste.

249 **"Yard Trimmings"** means discarded materials excepting Food Scraps that will decompose and/or
250 putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead
251 plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other
252 types of organic waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for
253 Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the
254 Contractor-provided Container

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**EXHIBIT B:
RESERVED**

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EXHIBIT C: GUARANTY AGREEMENT

THIS GUARANTY (the "Guaranty") is given as of the 26 day of February, 2016, by Waste Management Holdings, Inc., ("Guarantor"), to the CITY OF MILPITAS, a California municipal corporation ("City").

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. USA Waste of California, Inc. ("Contractor") is a corporation organized under the laws of the State of Delaware, all of the issued and outstanding stock of which is owned by Guarantor.
- B. Guarantor is a corporation organized under the laws of the State of Delaware.
- C. Contractor and City have negotiated an Agreement for Transfer and Disposal of Solid Waste (such agreement, as it may be amended, modified or waived from time to time, the "Agreement"), under which Contractor is to provide specified services to City. A copy of this Agreement is attached hereto and incorporated herein by this reference.
- D. It is a requirement of the Agreement, and a condition to City's entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.
- E. Guarantor is providing this Guaranty to induce City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms or conditions of the Agreement, Guarantor will promptly and fully perform or cause performance by a third party, satisfy or observe them in the place of the Contractor. Guarantor hereby guarantees prompt payment to City of each and every sum due from Contractor to City under the Agreement, as and when due from time to time, and the prompt performance of every other task and duty required to be performed by the Contractor under the Agreement.

2. Guarantor's Obligations Are Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited and, with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditioned upon the genuineness, validity, regularity or enforceability of the Agreement.

EXHIBIT C:

GUARANTY AGREEMENT

3. Waivers and Subordination. The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under Section 1 hereof for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) any amendment, modification or waiver of any provision of the Agreement or the extension of its Term; (3) the actual or purported rejection of the Agreement by a trustee in bankruptcy, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of City's rights or remedies against Contractor; or (5) any merger or consolidation of the Contractor with any other organization, or any sale, lease or transfer of any or all the assets of the Contractor.

The Guarantor hereby waives any and all rights, benefits and defenses under California Civil Code Sections 2809, 2815, 2819, 2845, 2849 and 2850, and all other rights permitted to be waived by Section 2856(a) including, without limitation, the right to require City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agree that City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing City's rights and remedies in enforcing this Guarantee.

The Guarantor hereby waives and agrees to waive at any future time at the request of City, to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to the Guarantor, the time for Contractor's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other indemnification with respect to Contractor's obligations under the Agreement or any security therefor is released or exchanged in whole or in part or otherwise dealt with; (d) any assignment of the Agreement is effected which does not require City's approval; or (e) any termination or suspension of the Agreement arising by reason of a default by Contractor.

EXHIBIT C: GUARANTY AGREEMENT

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, or (b) payment in full of any obligations then outstanding.

The Guarantor expressly subordinates and waives its rights to subrogation, reimbursement, contribution or indemnity with respect to performance by Guarantor of the obligations of Contractor guaranteed hereby, until such time as City receives payment or performance in full of all such obligations.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by Contractor, and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers by City.** No delay on the part of City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of City to take other or further action without notice or demand. No modification or waiver by City of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by City and by Guarantor, nor shall any waiver by City be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual attorney's fees and all other costs and expenses incurred by City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law; Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. Guarantor agrees that

City of Milpitas/ Waste Management of South Bay

EXHIBIT C: GUARANTY AGREEMENT

any action brought by City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agent for service of process in California:

1001 Fannin Street, Houston, TX 77002
Attn: General Counsel
Facsimile: 713-209-9710

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding on Successors.** This Guaranty shall inure to the benefit of City and its successors and shall be binding upon Guarantor and its successors, including a successor entity formed by a merger or consolidation, a transferee of substantially all of its assets, and its shareholders in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power to give this guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Articles of Incorporation and by-laws, and that the person signing this Guaranty on its behalf has authority to do so.

11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To City: City Clerk

 City of Milpitas

 455 East Calaveras Boulevard

 Milpitas, CA 95035

With a copy to City Contract Manager and City Attorney at the same address.

To Guarantor:

EXHIBIT C: GUARANTY AGREEMENT

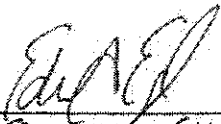
1001 Fannin Street, Houston, TX 77002
Attn: General Counsel
Facsimile: 713-209-9710

The parties may change the address to which notice is to be sent by giving the other party notice of the change as provided in this Section.

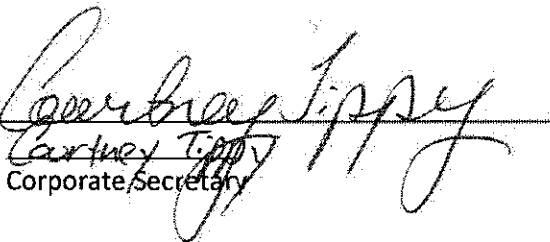
IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the day and year first above written.

Waste Management Holdings, Inc.

By: _____


EDWARD A. FGL
ASSISTANT TREASURER

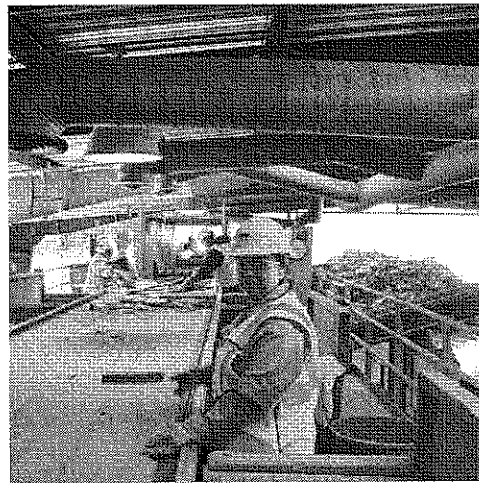
By: _____


Courtney Tippet
Corporate Secretary

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EXHIBIT D: CONTRACTOR'S PROPOSAL

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City of Milpitas

REQUEST FOR PROPOSALS FOR DISPOSAL SERVICES

27 OCTOBER 2015

Presented to
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Presented by
USA WASTE OF CALIFORNIA, INC.
dba Waste Management of South Bay
172 98th Avenue, Oakland CA 94603
(510) 613-2158 Phone



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October 27 2015

Mary Lavelle, City Clerk
City of Milpitas
City Hall
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Ms. Lavelle,

USA Waste of California, Inc., a Delaware Corporation doing business as Waste Management of South Bay, the proposing legal entity identified in Business Structure, Section 6.4.1, is pleased to submit this proposal for Disposal Services to the City of Milpitas.

Waste Management of South Bay brings more than 80 years of experience in Santa Clara County. Utilizing our Guadalupe Rubbish Disposal Company, DBA Guadalupe Recycling and Disposal Facility ("Guadalupe") located in San Jose, residents and businesses of the City of Milpitas can feel confident that their non-recyclable materials are handled in an environmentally safe and reliable manner.

Under this proposal, Waste Management of South Bay offers the City of Milpitas the opportunity to be associated with a Class III solid waste landfill with a permitted Construction and Demolition Material Recovery Facility (MRF), whose commitment to environmental stewardship extends to protecting the natural beauty and ecological diversity of our site. Guadalupe is an active participant in the national Wildlife Habitat Council's Habitat Management Certification program. By utilizing Guadalupe, the Milpitas Community will feel comfortable knowing their municipal solid waste will go to a facility that meets and exceeds all regulatory requirements and has good relationships with its surrounding community and neighbors.

Guadalupe has been serving the San Jose community since 1929.

The enclosed proposal represents our Disposal portion of an integrated sustainability solution program, which is designed to assist the City of Milpitas meet or exceed its diversion goals, by incorporating best practices and best available technology unmatched by any other waste company.

"With submittal of this Disposal Proposal, Waste Management of South Bay acknowledges and accepts all terms and conditions of the Disposal Agreement, except for any exceptions taken in Section 6 of our proposal."

We welcome the opportunity to discuss our proposal with you further and the important role we can play in helping the City reach its long-term diversion and sustainability goals.

Sincerely,



Barry Skolnick
Area Vice President
USA Waste of California, Inc.
dba Waste Management of South Bay



Disposal Services



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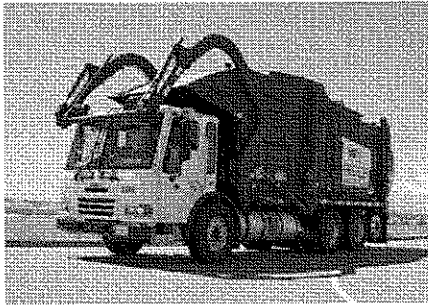
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1 EXECUTIVE SUMMARY

USA Waste of California, Inc., (Delaware Corp) dba Waste Management of South Bay, is pleased to submit this proposal for Disposal Services to the City of Milpitas.



As the leading provider of recycling and comprehensive waste management services in North America, Waste Management serves nearly 20 million municipal, commercial, industrial, and residential customers through a network of 367 collection operations, 355 transfer stations, 134 recycling plants/MRFs, 273 active landfill disposal sites, 137 landfills under post-closure care, 16 waste-to-energy plants, 111 landfill gas to energy facilities, and the largest fleet of alternative-fuel vehicles in the industry. Waste Management's national experience and expertise directly benefit the Bay Area and the City of Milpitas.

Building upon this vast knowledge and experience, Waste Management of South Bay brings more than 80 years of experience in Santa Clara County. Utilizing our Guadalupe Rubbish Disposal Company, DBA Guadalupe Recycling and Disposal Facility ("Guadalupe") located in San Jose, residents and businesses of the City of Milpitas can feel confident that their non-recyclable materials are handled in an environmentally safe and reliable manner.

The Guadalupe Recycling and Disposal Facility has the capacity and permitting to meet the City of Milpitas' disposal needs. Within the 411-acre site, 115 acres support the facility's recycling and landfill operations. Guadalupe is permitted to accept 3,650 tons of material daily and holds all the necessary permits for a Class III disposal facility for non-hazardous materials.

It meets or exceeds all federal, state, and local requirements for landfill management and is regulated by the California Regional Water Quality Control Board, Bay Area Air Quality Management District, CalRecycle and the City of San Jose Department of Planning and Code Enforcement.

Our pledge to the residents and businesses of the City of Milpitas is to be your environmental services solution provider, ensuring safe, effective and efficient Disposal operations. With Waste Management of South Bay, our Milpitas customers will have an engaged community partner. We take pride in our community and civic involvement and are committed to outreach and media efforts to keep residents informed about what is taking place at Guadalupe. The Guadalupe Recycling and Disposal Facility enjoys good relationships with our community neighbors and adheres to regulatory mandates to mitigate odors and control vectors.

Environmental Protection

Waste Management is dedicated to the proper handling and increased diversion of waste. Each of our Bay Area landfills is engineered to protect the environment and meets or exceeds all federal, state and local regulations. Every Class III landfill features an extensive network of wells and vacuum extraction systems to capture and control landfill gas emissions. Protection of ground water is also a priority and all of our landfills have superior and proven leachate collection and control systems in place.

We are confident that our response will provide you with a behind-the-scenes view into why Waste Management of South Bay, through strategic planning and partnerships with the City of Milpitas, is the only company that can deliver superior service to Milpitas residents and businesses.

Wildlife Habitat Protection

At Guadalupe, nearly 300 acres of the 411-acre site is home to wildlife including a creek featuring an 800-foot fish ladder for native Steelhead Trout and Chinook Salmon.



Waste Management has more than 25,000 acres nationwide dedicated to wildlife habitats. Locally, we have more than 1,500 acres preserved for wildlife, including 250 acres at Kirby Canyon through a Conservation Plan with the U.S. Fish & Wildlife Plan as well as a Wildlife Habitat Easement Plan at the Altamont Landfill for another 1,000 acres. The Redwood Landfill, home to waterfowl, wildlife and a visiting Golden Eagle, transferred 180 acres to the Marin Audubon Society for restoration to wetland status in 2003. Through the national non-profit Wildlife Habitat Council, three of the landfills have been certified Wildlife at Work sites for their restoration and education programs.

Carbon Footprint Reduction

Guadalupe features a WM EarthCare Landscape Center, which is stocked with landscape products made by Waste Management from Bay Area-sourced, 100% recycled materials. We are closing the loop on materials once destined for landfills and helping businesses and homeowners access locally produced compost and mulch thereby reducing the carbon footprint associated with virgin landscape materials.

For more than 10 years, Guadalupe hosted a landfill gas to energy facility. In 2013, the plant was decommissioned so it could be relocated and is expected to be operational in 2016. Waste Management installed the first landfill gas-to-energy generators in 1989 at the Altamont Landfill in Livermore, CA. Today, the company operates 111 landfill gas to electricity facilities across the country.

Resource Recovery

Waste Management actively promotes waste diversion at its Material Recovery Facilities (MRFs) and landfills. It employs state-of-the-art technology to separate like materials at its single stream recycling and construction and demolition (C&D) MRFs. The Guadalupe C&D MRF has the potential to divert 200 tons of construction debris per day along with 175 tons of green waste. Guadalupe also separates concrete to be reused as aggregate base for landfill roadways.

In Conclusion

We believe the combined services of Waste Management of South Bay and the Guadalupe Recycling and Disposal Facility is unmatched by any other potential provider.

Waste Management of South Bay's Disposal proposal is field tested and ready for implementation on day one of the new contract.

Our integrated infrastructure offers peace of mind, years of experience and proven environmental leadership.

Working together, we can change how residents and customers view the act of waste diversion and recycling for a cleaner, safer and more sustainable environment.

Awarding Waste Management of South Bay the privilege to serve the City of Milpitas not only means reliable, cost-effective, and sustainably-minded environmental services, but a long-term partnership that can drive diversion and improve quality of life for residents and the business community over the next 10-plus years.

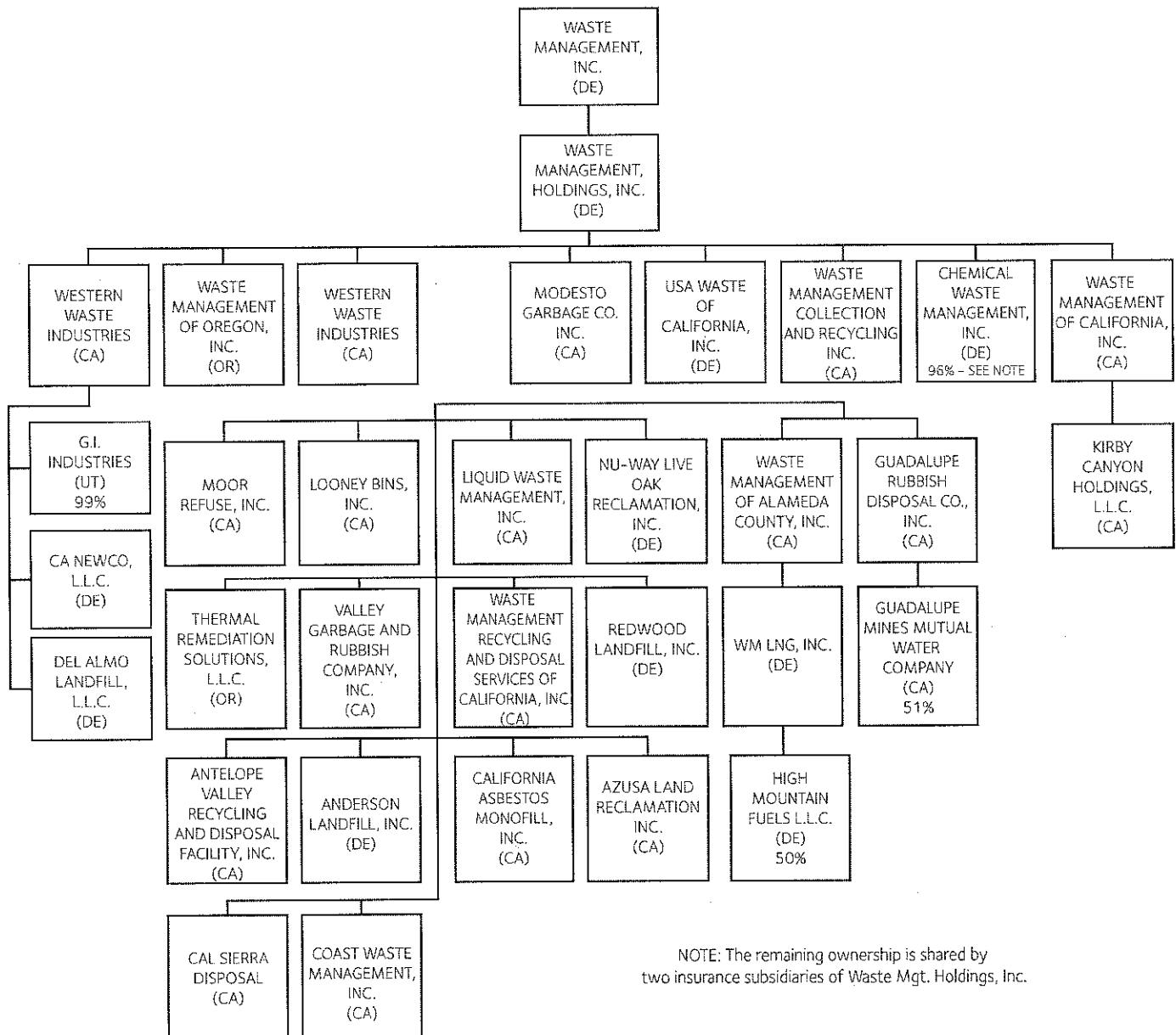


2. COMPANY DESCRIPTION

Business Structure

USA Waste of California, Inc. ("Proposer" for purposes of this Section 5.4.1) is a Delaware corporation authorized to do business in California. Proposer is a corporation. Proposer is the executing entity. Proposer was incorporated in 1993 and acquired by a subsidiary of Waste Management, Inc. in 1999 (20 years). Proposer's sole shareholder is Waste Management Holdings, Inc. ("WMHI"). There are no creditors owed debt greater than 10 percent.

The following entities are [] subsidiaries of USA Waste of California, Inc.:



Disposal Experience

As the leading provider of recycling and comprehensive waste management services in North America, Waste Management serves nearly 20 million municipal, commercial, industrial, and residential customers through a network of 367 collection operations, 355 transfer stations, 134 recycling plants/MRFs, 273 active landfill disposal sites, 137 landfills under post-closure care, 16 waste-to-energy plants, 111 landfill gas to energy facilities, and the largest fleet of alternative-fuel vehicles in the industry. Waste Management's national experience and expertise directly benefit the Bay Area.

Environmental Protection

Waste Management is dedicated to the proper handling and increased diversion of waste. Each of our Bay Area landfills is engineered to protect the environment and meets or exceeds all federal, state and local regulations. Every Class III landfill features an extensive network of wells and vacuum extraction systems to capture and control landfill gas emissions. Protection of ground water is also a priority and all of our landfills have superior and proven leachate collection and control systems in place.

Greenhouse Gas Capture Rate



Landfill gas, comprised of half methane and half carbon dioxide is a greenhouse gas created from the naturally occurring decay of organic materials in the landfill. Waste Management has one of the highest capture rates in the industry – in excess of 90% at each of its Bay Area landfills. Waste Management utilizes US Environmental Protection Agency-approved Tunable Diode Laser (TDL) technology to document Bay Area landfill gas capture rates. The U.S. EPA generally considers a 75% capture rate as typical in the industry.

Community Involvement

As a publicly traded company, Waste Management operates with transparency. We work closely with our Local Enforcement Agencies as well as surrounding communities to ensure we are good neighbors and stewards of the environment. In Santa Clara County, we established the Kirby Canyon Land Conservation Trust to preserve one of the Bay Area's few remaining serpentine-soil ecosystems. At the Redwood Landfill in Marin County, we privately funded and constructed an overcrossing above Highway 101 in 2006. The Altamont Landfill supports Alameda County recycling programs along with east County area open space and Livermore community arts programs.

Wildlife Habitat Protection



Waste Management has more than 25,000 acres nationwide dedicated to wildlife habitats. Locally, we have more than 1,500 acres preserved for wildlife. At Guadalupe, nearly 300 acres of the 411-acre site is home to wildlife including a creek featuring an 800-foot fish ladder for native Steelhead Trout and Chinook Salmon. Another 250 acres at Kirby Canyon

are dedicated through a Conservation Plan with the U.S. Fish & Wildlife Plan as well as a Wildlife Habitat Easement Plan at the Altamont Landfill for another 1,000 acres. The Redwood Landfill, home to waterfowl, wildlife and a visiting Golden Eagle, transferred 180 acres to the Marin Audubon Society for restoration to wetland status in 2003. Through the national non-profit Wildlife Habitat Council, three of the landfills have been certified Wildlife at Work sites for their restoration and education programs



Waste Management MRFs & Landfills in the Bay Area

Facilities:

Altamont Landfill & Resource Recovery Facility

10840 Altamont Pass Road, Livermore, CA 94550

925-455-7300

Hours: M – F, 6 am – 4 pm

Accepted Materials: Asbestos-Friable, Asbestos-Non-Friable, Auto Shredder Fluff, Biosolids, Construction & Demolition Debris, Drum Management-Liquids, Drum Management-Solids, Industrial & Special Waste, Liquifix (Solidification Services), Municipal Solid Waste, Yard Waste

Davis Street MRF, Recycling & Transfer Station

2615 Davis Street, San Leandro, CA 94577

510-563-4200

Hours: M – F, 7 am – 5 pm, Sat., 8 am – 4 pm

Accepted Materials: Appliances, Carpets, Construction & Demolition Debris, Dirt & Concrete, Electronics, Mattresses, Municipal Solid Waste, Recyclables, Tires, Yard Waste

Guadalupe Landfill and C&D Recovery Facility

15999 Guadalupe Mines Road, San Jose, CA 95120

408-268-1670

Hours: M – F, 8am – 4pm

Accepted Materials: Construction & Demolition Debris, Municipal Solid Waste

Kirby Canyon Recycling & Disposal Facility

910 Coyote Creek Golf Drive, Morgan Hill, CA 95037

408-779-2206

Hours: M – F, 5am – 4pm & Sat, 6am – 1 pm

Accepted Materials: Construction & Demolition Debris, Municipal Redwood Landfill & Recycling Center

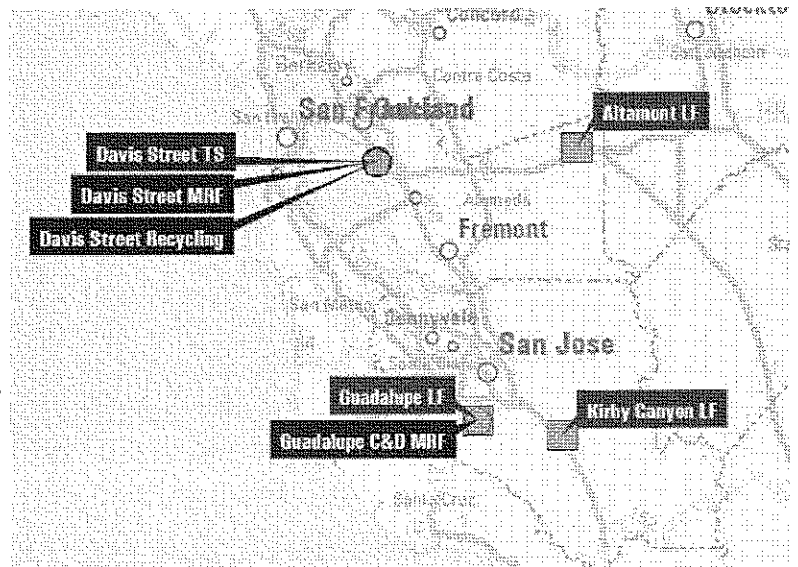
Tri-Cities Recycling & Disposal Facility (closed in 2015)

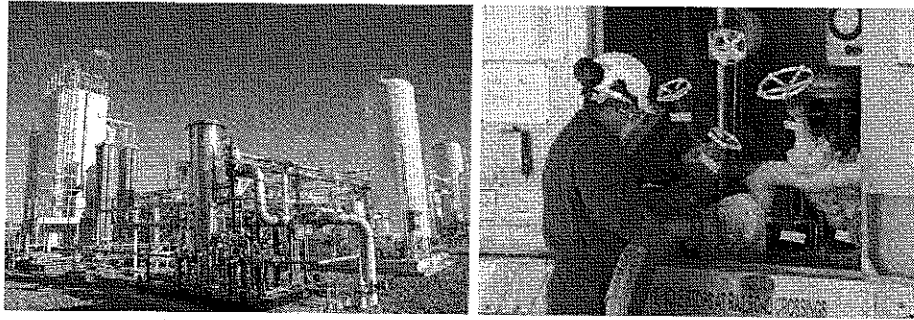
Service Area:

Alameda, Contra Costa, Marin, San Francisco, Santa Clara & Sonoma Counties.

Diversion Services:

Construction & Demolition Recycling, E-Waste Recycling, Food Scraps Composting, Single-Stream Recycling, White Goods Recycling, Dry Waste Recycling, Wood Scraps to Mulch, Green Waste Composting





Landfill Gas to LNG

Altamont has the world's largest landfill gas to liquefied natural gas (LNG) plant, producing 13,000 gallons a day of bio-fuel for our collection vehicles. This fuel will power the collection fleet Waste Management of South Bay will use to serve the City of Milpitas residents and businesses.

Environmental Awards:



**2014 StopWaste Business Efficiency Award
(WM EarthCare Homegrown Compost)**



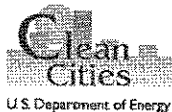
2010 Clean Air Award, Breathe California (Altamont)



2010 Governor's Environmental and Economic Leadership Award (Altamont)



**2009 Project of the Year, US EPA Landfill Methane Outreach Program
(Altamont)**

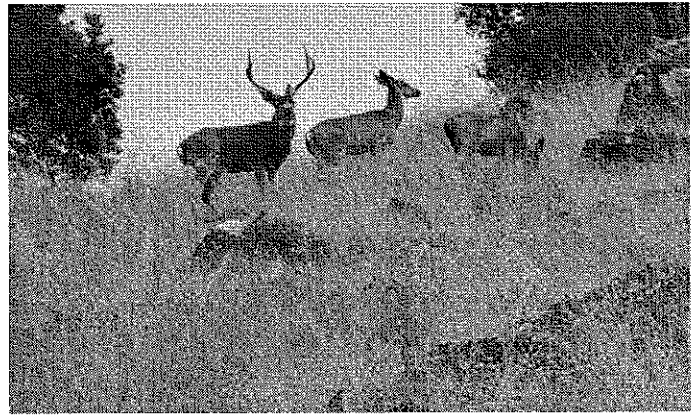
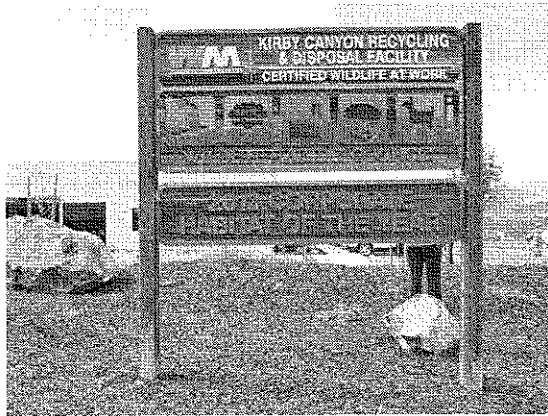


**2009 Clean Air Champion US Department of Energy Clean Cities Coalition
East Bay Chapter (Altamont)**



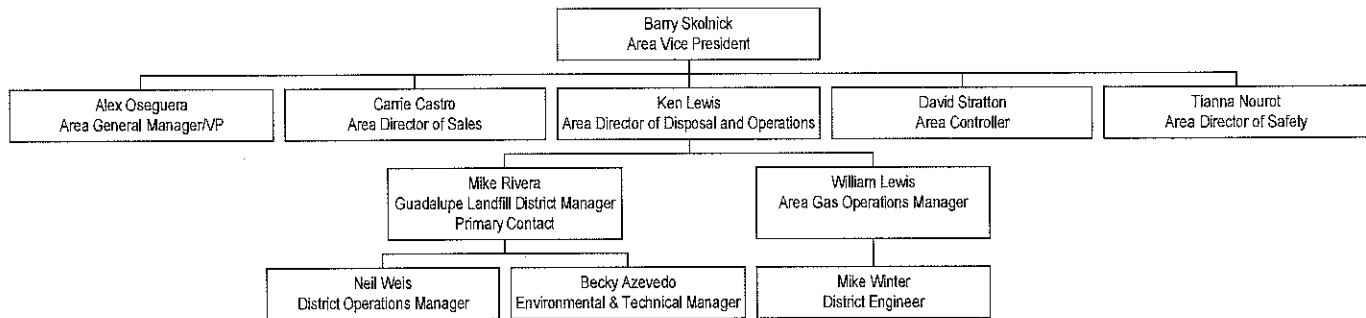
Wildlife Habitat Certification:

- Guadalupe Recycling & Disposal Facility
- Altamont Landfill & Resource Recovery
- Kirby Canyon Recycling & Disposal Facility



Key Personnel

Waste Management of South Bay Guadalupe Landfill and Recycling Center



Ken Lewis, Director Landfill Operations

510-613-2158
klewis@wm.com

Ken Lewis is the Director of landfill facility operations in the California Bay Area. His oversight includes all landfill, recycling, composting, and mulch operations, which occur at these facilities. He has over 20 years of experience in the industry, including civil and geotechnical engineering.

He first joined Waste Management 15 years ago as an engineer before transitioning to management of operations. Prior to joining Waste Management, Mr. Lewis was a design and engineer consultant with EMCOM and other consulting companies.



Mike Rivera, Landfill District Manager

408-323-6311
MRivera2@wm.com

Mike joined Waste Management in 2002 as a Laboratory Receiving Manager at the Kettleman Hills Facility. During his tenure at Waste Management, he has worked as a District Manager at the McKittrick Facility, Anderson Landfill, a BPL Coach and since 2013 as the District Manager of Guadalupe and Kirby Landfill. A native of Chicago, IL, Mike has been a community leader in Shasta and Kern County for the past 20 years.



Bill Louis, Gas Operations Manager, Northern California / Nevada Area

925-525-8611
WLouis@wm.com

Bill Louis is Gas Operations Manager in the Northern California / Nevada Area. He has over 25 years of experience in landfill gas, geology, hydrogeology and environmental remediation. His team of technicians and gas plant operators collect and control landfill gas at six landfill sites. They are dedicated to protecting the environment while utilizing the energy value of the gas to produce LNG truck fuel and enough electricity to supply 11,000 homes. By applying a multidisciplinary approach to landfill gas control, his team has achieved a stellar environmental record, and the respect and appreciation of regulatory inspectors.



Becky Azevedo – Environmental Protection Manager

408-960-0769
Razevedo@wm.com

Becky Azevedo has worked at Waste Management for over 9 years as an Environmental Protection Manager at multiple sites in the South San Francisco Bay Area. Becky is responsible for managing environmental compliance Guadalupe and Kirby Canyon landfills and regularly interacts with regulators and inspectors onsite to ensure compliance with the sites' operating permits. Becky enjoys training employees on compliance and environmental sustainability.



Neil Wise – District Operations Manager

408-323-6364
N Wise@wm.com

Neil Wise has been with Waste Management since 2001 as a District Operations Manager. He manages the operations and employees that included heavy equipment operators, utility operators, and site maintenance. In 2010 he became the District Operations Manager at Guadalupe. In addition to his regular duties, he enjoys giving tours to school and community groups interested in the inner workings of a landfill.



Mike Winter – District Engineer

408-960-0770
MWinter@wm.com

Michael Winter joined Waste Management in 2013 as the District Engineer for Guadalupe Landfill. Since 2013 his roles and responsibilities have increased to include supporting Kirby Canyon Landfill as well as, several transfer stations and material recycling facilities(MRF) in Monterey County.





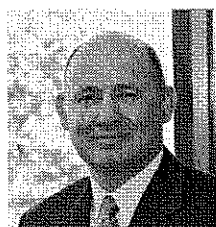
Barry Skolnick, Area Vice President (AVP), Northern California/Nevada Area

510-613-2112
bskolnic@wm.com

Barry Skolnick moved to WMAC's Oakland Office to become the Area Vice President in 2009. He joined Waste Management in 2002, bringing more than 10 years of industry experience as a former owner and operator of several waste and recycling companies. Barry oversees the fiscal operations of a market area that spans from Fort Bragg to Monterrey and east to the Nevada High Sierras. The region is home to several small, medium and large hauling companies, transfer stations and landfills with an employee base of approximately 2,200.

Barry's responsibilities include:

- Review and approval of all Northern California/Nevada Area contracts
- Oversees performance of operations, maintenance, customer service, and all transfer stations and landfills serving the Area
- Manages strategic planning and capital improvements for all Area locations



Alex Oseguera, Vice President and General Manager, Northern California/Nevada Area

209-333-5613
aoseguer@wm.com

Alex Oseguera brings 21 years of progressive experience with Waste Management to the Monterey Regional Waste Management District. He joined the company in 1991, serving in several capacities and locales, including Area Vice President for the Sacramento/Nevada Area, Director of Operations for the Sacramento Area, District Manager for the Lodi and Santa Clara facilities, Director of Operations for Waste Management's Mexican operations based in Mexico City, and Assistant Division Manager in Santa Ana, California. Alex and his team have received several coveted Waste Management honors, including "Best Market Area in the West" for 2006, 2007, and 2010.

Alex's responsibilities include:

- Manages government relations and public affairs
- Provides strategic guidance for contract service offerings
- Assists in managing strategic planning and capital allocation for all Area locations

Labor Arrangements

Guadalupe Landfill and Recycling Facility is a Non-Union facility.

Past Performance Record

Litigation and Regulatory Actions.

The attached Schedule includes civil/legal actions¹, regulatory actions², and criminal actions occurring in the Greater Bay Area and involving USA Waste of California, Inc. (proposer), Waste Management Holdings, Inc. (parent of proposer), and subsidiaries of proposer operating in the Greater Bay Area.

Payment of Fines, Penalties, Settlements, or Damages.

The attached Schedule includes fines, penalties and damages based on events in the Greater Bay Area and involving USA Waste of California, Inc. (proposer)³, Waste Management Holdings, Inc. (parent of proposer), and subsidiaries of proposer operating in the Greater Bay Area.

Regarding settlements, we have the following additional matters to report:

City of Livermore Franchise Matter. The City of Livermore claimed WMAC breached its collection franchise agreement with the City by failing to provide an audited financial statement for the final year of the agreement and to pay additional franchise fees related to the handling of certain materials. WMAC claimed the City undercompensated the Company for its handling of certain materials and failed to pay increased costs associated with government fees and to reimburse the Company for an overpayment in franchise fees. Settled in 2012.

North Port of Oakland Matter. WMAC and the Port of Oakland reached a settlement in 2010 regarding alleged contamination emanating from a closed inert materials landfill operated by WMAC's predecessor company in the 1950s.

There are numerous additional subsidiaries of proposer that have no business operations in our Bay Area market area and, therefore, have therefore been excluded.

Table 1 includes a list of matters requested above for proposer's operations in its "Bay Area" market area. Copies of such violations, notices, etc. are not maintained in a centralized fashion and, therefore, have not been included. If the Participating Agencies require actual copies, proposer will make every reasonable effort to provide them. Further, proposer does not maintain a centralized database of warning notices or vehicle tickets, so such information has not been included.

¹ The Company's legal database does not track civil matters unless the underlying disputes are being or have been litigated, so our response is limited as such. Further, (a) we interpret "legal actions" to be matters involving litigation; (b) some types of cases are excluded as a standard matter from our review process, including third party personal injury and property claims less than \$10,000, debt collection matters and worker's compensation cases, as well as litigation relating to sites that have been sold or closed; and (c) we omitted plaintiff names and settlement details regarding cases brought by individuals due to confidentiality requirements in most settlement agreements.

² Because "regulatory actions" could include numerous categories of matters not pertinent to the RFP, and because NOV-type matters are localized in nature, we have focused our disclosures on those we believe most relevant to the City's assessment of our ability to perform the proposed services (i.e., environmental and safety-related violations and/or penalties received by the business unit(s) which will oversee services to the City).

³ We have focused our disclosures on those we believe most relevant to the City's assessment of our ability to perform the proposed services (i.e., environmental and safety-related violations and/or penalties received by the business unit(s) which will oversee services to the City).



Disposal Services

Section 2: Company Description



Table 2 Past Performance Record

WM CLOSE DATE	DESCRIPTION
2014	Litigation as it relates to the City of Oakland, and others, regarding the RFP process.
02/01/06	Challenge to the City of American Canyon's grant of exclusive franchise to WM for collection of C&D waste. WM's demurrer was sustained, case dismissed.
11/01/06	Allegation that Sonoma Marin Hauling breached certain contractual obligations to deliver waste to the West Marin Landfill. Plaintiffs also allege that WM Marin County, the cities of Stinson Beach and Bolinas and the former owner of WM's company may have liability for the environmental remediation and closure/post closure costs at the landfill. The case was bifurcated. One case was brought by the State asserting that the Martinelli's were obligated to develop and fund a closure plan for the landfill. The second case, which was stayed pending the resolution of the State's case, involved the Martinellis' cross claims for indemnity for closure costs and declaratory relief.
04/30/07	Petition for writ of mandate and complaint filed against the Salinas Valley Solid Waste Authority to require the SVSWA to perform closure and post closure requirements of the Jolon Road Landfill. SVSWA filed a cross-complaint for declaratory relief, indemnity and contribution. SVSWA leased the landfill property from USA Waste and operated the landfill for closure and post closure.
07/15/07	Plaintiff was terminated for his involvement in a preventable fatality. Young alleges his termination was unlawful age and race discrimination.
11/06/07	Redwood LF asserted that as a result of negligence by DKS in the design of a highway overpass, Redwood incurred additional design costs and increased costs to acquire additional easement property for access.
12/03/08	Employment discrimination matter.
12/08/08	Lawsuit brought by customer alleging breach of contract arising out of lock-out in Oakland.
12/08/08	Action alleging breach of contract and seeking injunctive relief in connection with WM's labor negotiations with Local 70. Settlement stipulated WM will provide the City with Services valued over \$4.8M and compensatory damages in the amount of \$337,221.
01/14/09	Violations relating to condition of facility, proper guarding and electrical. Penalty \$5,730.00
04/08/09	Alleged stormwater violations at the Davis Street Transfer Station.
12/21/09	Complaint alleging unpaid contributions to the ILWU Warehousemen's Welfare Trust.
12/21/09	Complaint for damages alleging violation of the no strike/no lock out provisions of collective bargaining agreements entered into between WMAC and Local 6.
12/22/09	Condemnation action by the state to condemn part of the Altamont Landfill for expanding the South Bay Aqueduct facility.
03/25/10	Condemnation action brought to take property at the Company's landfill.
01/27/11	Clean Water Act citizen suit alleging violations of federal Clean Water Act from stormwater and non-stormwater discharges.
10/27/11	Former employees allegedly received bribes from a vendor to allow landfill loads to enter Kirby Canyon landfill without payment or at a reduced payment. The county filed a claim against WM to recover fees on those disposal tons that were either not counted or misclassified. Settled for \$10.3M.

WM CLOSE DATE	DESCRIPTION
02/20/12	Petition for writ of mandate seeking to set aside San Francisco Regional Water Quality Control Board's July 8, 2009 issuance of Waste Discharge Requirements to Redwood Landfill.
03/29/12	Wrongful termination matter.
07/31/12	Citation for failure to have fall protection that resulted in employee injury. Penalty \$18,750
07/31/12	As the result of a routine inspection on September 23, 2011, it was alleged that several piles of the MRF fines had unacceptable levels of MSW. This material was used at the solidification pad to be commingled with treated auto shredded waste for alternate daily cover application. Improper use of contaminated MRF fines were also noted on during the June 15, 2011, July 21, 2011 and August 26, 2011 inspections. \$750 penalty.
08/15/12	Clean Water Act citizen suit alleging failure to comply with stormwater discharge.
09/26/12	Claim against engineering firm relating to flaws in design of perimeter levee at Redwood Landfill.
11/13/12	Complaint alleged race discrimination, race harassment and retaliation in violation of the Fair Employment and Housing Act; failure to prevent discrimination/harassment; and failure to pay wages (meal period penalties).
12/05/12	Complaint in Eminent Domain.
01/03/13	It was alleged that between December 20, 2010 and December 23, 2010 the facility discharged 86,220 gallons of storm water at outfall SW-2 contaminated with condensate to an unnamed tributary of McAbee Creek. \$167,285 fine paid.
04/09/13	Action by former employee alleging sexual harassment, discrimination, and wrongful termination.
08/02/13	Complaint alleging race discrimination, failure to prevent discrimination and harassment, wrongful termination and defamation.
05/06/14	Citizen suit under federal clean water act and RCRA based on alleged violations of NPDES permit requirements. Voluntarily dismissed by Plaintiff without prejudice.
07/31/14	Group complaint by fourteen plaintiffs alleging various FMLA claims, retaliation, sex discrimination/harassment, and intentional infliction of emotional distress.
08/08/14	Citizen suit alleging violations of federal Clean Water Act and California general permit for stormwater discharges.
09/22/14	Apartment building owners alleged they were charged for services they did not receive.
10/08/14	On 5/4/15 the ALJ issued an order approving our settlement with Cal OSHA after WM employee run over by L90 loader while working as a spotter/traffic director. Penalty \$25,750.
10/13/14	Cal-OSHA citation alleging failure to record a recordable injury in OSHA Form 300 log within seven days of injury. Citation was vacated based on additional information provided by Waste Management showing no violation.
05/11/15	Complaint in Eminent Domain.
06/08/15	Complaint alleging discrimination. This action was severed from related federal FMLA matter and remanded to state court. 8 plaintiffs in the state action, 5 in federal.

WM CLOSE DATE	DESCRIPTION
06/24/15	On June 18, 2012, an employee working at Davis Street Transfer in San Leandro she was struck from behind by a front-end loader travelling in same direction. Bucket of loader was elevated and raised and this obstructed operator's visibility of pedestrian traffic. Right-hand corner of the bucket snagged her shirt and she lifted into the air. She fell to ground and was run over by both the front and rear right hand wheels. \$50,750 initial penalty + \$25,750 settlement 6/24/15
Open	Challenge to the City and County of San Francisco's disposal contract award to Recology.
Open	Employee class action lawsuit alleging meal/rest break violations.
Open	Citation and Notification of Penalty for alleged violations of California safety regulations for failing to equip rear-end loading vehicles with shielding to prevent flying particles or substances. Penalty \$935.
Open	Former employee alleging discrimination and wrongful termination.
Open	Site cleanup requirements issued by the Regional Water Quality Control Board regarding cleanup of historic mercury mining areas at Guadalupe Landfill.
Open	Condemnation action by the State to condemn part of the Altamont Landfill for expanding the South Bay Aqueduct facility. Case settled with WM agreeing to accept a condemnation award of \$975,000 in cash, plus annual rental payments of \$11,000 per acre for any temporary construction easements continuing after May 2012. Payment received.
Open	It was alleged that on February 27, 2014 7,200 gallons of water containing 280 micrograms per liter of dinoseb a Resource Conservation and Recovery Act P020 listed hazardous waste was disposed of at the facility. \$0.00 fine.
Open due to ongoing monitoring	<p>Clean Water Act citizen suit alleging failure by Carmel Marina Corporation to comply with its General Permit for storm water discharges. Settlement entered as a consent decree, \$70,000</p> <p>As the result of an inspections on November 15, 2013, it was alleged that the facility failed to submit for review and approval for Fill Area 2 prior to the large scale earth moving operation getting underway preparing the initial fill modules within Area 2 to accept waste. \$0.00 fine.</p> <p>As the result of a report review, it was alleged that on April 24, 2012 an uncontrolled release of approximately 1,500 gallons of landfill leachate occurred while filling a water truck. \$0.00 fine.</p>

The above list is current as of September 25, 2015

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Waste Management, Inc.

We have audited the accompanying consolidated balance sheets of Waste Management, Inc. (the "Company") as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, cash flows, and changes in equity for each of the three years in the period ended December 31, 2014. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Waste Management, Inc. at December 31, 2014 and 2013, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2014, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Waste Management, Inc.'s internal control over financial reporting as of December 31, 2014, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 17, 2015 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Houston, Texas
February 17, 2015

WASTE MANAGEMENT, INC.
CONSOLIDATED BALANCE SHEETS
(In Millions, Except Share and Par Value Amounts)

	December 31,	
	2014	2013
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,307	\$ 58
Accounts receivable, net of allowance for doubtful accounts of \$30 and \$33, respectively	1,587	1,699
Other receivables	350	111
Investment in unconsolidated entity	—	177
Parts and supplies	106	178
Deferred income taxes	115	113
Other assets	176	163
Total current assets	3,641	2,499
Property and equipment, net of accumulated depreciation and amortization of \$15,968 and \$16,723, respectively	10,657	12,344
Goodwill	5,740	6,070
Other intangible assets, net	440	529
Investments in unconsolidated entities	408	414
Other assets	526	747
Total assets	<u>\$21,412</u>	<u>\$22,603</u>
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable	\$ 740	\$ 744
Accrued liabilities	1,180	1,069
Deferred revenues	475	475
Current portion of long-term debt	1,090	726
Total current liabilities	3,485	3,014
Long-term debt, less current portion	8,345	9,500
Deferred income taxes	1,453	1,842
Landfill and environmental remediation liabilities	1,531	1,518
Other liabilities	709	727
Total liabilities	15,523	16,601
Commitments and contingencies		
Equity:		
Waste Management, Inc. stockholders' equity:		
Common stock, \$0.01 par value; 1,500,000,000 shares authorized; 630,282,461 shares issued	6	6
Additional paid-in capital	4,585	4,596
Retained earnings	6,888	6,289
Accumulated other comprehensive income	23	154
Treasury stock at cost, 171,745,077 and 165,961,646 shares, respectively	(5,636)	(5,338)
Total Waste Management, Inc. stockholders' equity	5,866	5,707
Noncontrolling interests	23	295
Total equity	5,889	6,002
Total liabilities and equity	<u>\$21,412</u>	<u>\$22,603</u>

See notes to Consolidated Financial statements.



WASTE MANAGEMENT, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(In Millions, Except per Share Amounts)

	Years Ended December 31,		
	2014	2013	2012
Operating revenues:			
Service revenues	\$12,646	\$12,566	\$12,327
Tangible product revenues	1,350	1,417	1,322
Total operating revenues	13,996	13,983	13,649
Costs and expenses:			
Operating costs:			
Cost of services	7,856	7,880	7,765
Cost of tangible products	1,146	1,232	1,114
Total operating costs	9,002	9,112	8,879
Selling, general and administrative	1,481	1,468	1,472
Depreciation and amortization	1,292	1,333	1,297
Restructuring	82	18	67
Goodwill impairments	10	509	4
(Income) expense from divestitures, asset impairments (other than goodwill) and unusual items	(170)	464	79
	11,697	12,904	11,798
Income from operations	2,299	1,079	1,851
Other income (expense):			
Interest expense, net	(466)	(477)	(484)
Equity in net losses of unconsolidated entities	(53)	(34)	(46)
Other, net	(29)	(74)	(18)
	(548)	(585)	(548)
Income before income taxes	1,751	494	1,303
Provision for income taxes	413	364	443
Consolidated net income	1,338	130	860
Less: Net income attributable to noncontrolling interests	40	32	43
Net income attributable to Waste Management, Inc.	\$ 1,298	\$ 98	\$ 817
Basic earnings per common share	\$ 2.80	\$ 0.21	\$ 1.76
Diluted earnings per common share	\$ 2.79	\$ 0.21	\$ 1.76
Cash dividends declared per common share	\$ 1.50	\$ 1.46	\$ 1.42

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In Millions)

	Years Ended December 31,		
	2014	2013	2012
Consolidated net income	\$ 1,338	\$ 130	\$ 860
Other comprehensive income (loss), net of taxes:			
Derivative instruments, net	1	12	(12)
Available-for-sale securities, net	4	2	2
Foreign currency translation adjustments	(124)	(68)	33
Post-retirement benefit obligation, net	(12)	15	(2)
Other comprehensive income (loss), net of taxes	(131)	(39)	21
Comprehensive income	1,207	91	881
Less: Comprehensive income attributable to noncontrolling interests	40	32	43
Comprehensive income attributable to Waste Management, Inc.	\$ 1,167	\$ 59	\$ 838

See notes to Consolidated Financial statements.



WASTE MANAGEMENT, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Millions)

	Years Ended December 31,		
	2014	2013	2012
Cash flows from operating activities:			
Consolidated net income	\$ 1,338	\$ 130	\$ 860
Adjustments to reconcile consolidated net income to net cash provided by operating activities:			
Depreciation and amortization	1,292	1,333	1,297
Deferred income tax (benefit) provision	(118)	(149)	67
Interest accretion on landfill liabilities	88	87	84
Interest accretion on and discount rate adjustments to environmental remediation liabilities and recovery assets	14	(10)	6
Provision for bad debts	42	39	57
Equity-based compensation expense	65	58	29
Excess tax benefits associated with equity-based transactions	(5)	(10)	(11)
Net gain on disposal of assets	(35)	(21)	(21)
Effect of goodwill impairments	10	509	4
Effect of (income) expense from divestitures, asset impairments (other than goodwill) and unusual items and other	(137)	535	95
Equity in net losses of unconsolidated entities, net of dividends	42	34	46
Change in operating assets and liabilities, net of effects of acquisitions and divestitures:			
Receivables	(268)	44	(131)
Other current assets	(19)	(7)	(50)
Other assets	22	4	105
Accounts payable and accrued liabilities	117	(27)	(57)
Deferred revenues and other liabilities	(117)	(94)	(85)
Net cash provided by operating activities	<u>2,331</u>	<u>2,455</u>	<u>2,295</u>
Cash flows from investing activities:			
Acquisitions of businesses, net of cash acquired	(35)	(724)	(250)
Capital expenditures	(1,151)	(1,271)	(1,510)
Proceeds from divestitures of businesses and other assets (net of cash divested)	2,253	138	44
Net receipts from restricted trust and escrow accounts	19	71	14
Investments in unconsolidated entities	(33)	(33)	(77)
Other	(58)	(81)	(51)
Net cash provided by (used in) investing activities	<u>995</u>	<u>(1,900)</u>	<u>(1,830)</u>
Cash flows from financing activities:			
New borrowings	2,817	2,232	1,620
Debt repayments	(3,568)	(2,077)	(1,498)
Common stock repurchases	(600)	(239)	—
Cash dividends	(693)	(683)	(658)
Exercise of common stock options	93	132	43
Excess tax benefits associated with equity-based transactions	5	10	11
Acquisitions of and distributions paid to noncontrolling interests	(125)	(59)	(46)
Other	(1)	(3)	(2)
Net cash used in financing activities	<u>(2,072)</u>	<u>(687)</u>	<u>(530)</u>
Effect of exchange rate changes on cash and cash equivalents	(5)	(4)	1
Increase (decrease) in cash and cash equivalents	<u>1,249</u>	<u>(136)</u>	<u>(64)</u>
Cash and cash equivalents at beginning of year	<u>58</u>	<u>194</u>	<u>258</u>
Cash and cash equivalents at end of year	<u>\$ 1,307</u>	<u>\$ 58</u>	<u>\$ 194</u>

See notes to Consolidated Financial statements.

WASTE MANAGEMENT, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
(In Millions, Except Shares in Thousands)

	Waste Management, Inc. Stockholders' Equity								Noncontrolling Interests
	Total	Common Stock Shares	Common Stock Amounts	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Treasury Stock Shares	Treasury Stock Amounts	
Balance, December 31, 2011	\$6,390	630,282	\$ 6	\$4,561	\$6,721	\$ 172	(169,750)	\$(5,390)	\$ 320
Consolidated net income	860	—	—	—	817	—	—	—	43
Other comprehensive income (loss), net of taxes	21	—	—	—	—	21	—	—	—
Cash dividends declared	(658)	—	—	—	(658)	—	—	—	—
Equity-based compensation transactions, including dividend equivalents, net of taxes	101	—	—	(15)	(1)	—	3,680	117	—
Distributions paid to noncontrolling interests	(46)	—	—	—	—	—	—	—	(46)
Other	7	—	—	3	—	—	8	—	4
Balance, December 31, 2012	\$6,675	630,282	\$ 6	\$4,549	\$6,879	\$ 193	(166,062)	\$(5,273)	\$ 321
Consolidated net income	130	—	—	—	98	—	—	—	32
Other comprehensive income (loss), net of taxes	(39)	—	—	—	—	(39)	—	—	—
Cash dividends declared	(683)	—	—	—	(683)	—	—	—	—
Equity-based compensation transactions, including dividend equivalents, net of taxes	216	—	—	47	(5)	—	5,461	174	—
Common stock repurchases	(239)	—	—	—	—	—	(5,368)	(239)	—
Distributions paid to noncontrolling interests	(59)	—	—	—	—	—	—	—	(59)
Other	1	—	—	—	—	—	7	—	1
Balance, December 31, 2013	\$6,002	630,282	\$ 6	\$4,596	\$6,289	\$ 154	(165,962)	\$(5,338)	\$ 295
Consolidated net income	1,338	—	—	—	1,298	—	—	—	40
Other comprehensive income (loss), net of taxes	(131)	—	—	—	—	(131)	—	—	—
Cash dividends declared	(693)	—	—	—	(693)	—	—	—	—
Equity-based compensation transactions, including dividend equivalents, net of taxes	195	—	—	79	(6)	—	3,779	122	—
Common stock repurchases	(600)	—	—	(180)	—	—	(9,569)	(420)	—
Distributions paid to noncontrolling interests	(34)	—	—	—	—	—	—	—	(34)
Acquisitions of noncontrolling interests and divestiture of Wheelabrator business	(188)	—	—	90	—	—	—	—	(278)
Other	—	—	—	—	—	—	7	—	—
Balance, December 31, 2014	\$5,889	630,282	\$ 6	\$4,585	\$6,888	\$ 23	(171,745)	\$(5,636)	\$ 23

See notes to Consolidated Financial statements.





October 7, 2015

City of Milpitas
City Hall
455 East Calaveras Blvd.
Milpitas, CA 95035

Re: RFP for Solid Waste, Recyclables and Organics Collection, Processing and Disposal Services

We have been advised that Waste Management, Inc., is submitting a response to an RFP for Solid Waste, Recyclables and Organics Collection, Processing and Disposal Services. They have asked us to provide you with a letter which addresses the Company's financial capability for this process.

Bank of America, N.A. has had the pleasure of doing business with Waste Management Inc. and its subsidiaries for approximately 20 years. Not only do we enjoy a comprehensive treasury management relationship, but we also have a very significant credit relationship. We are the Administrative Agent for and a participant in, the company's five-year \$2.25 billion Revolving Credit Facility, of which approximately \$1.43 billion is available, as of this date, to be utilized for direct borrowings and issuance of standby letters of credit subject to certain conditions. The facility has been handled as agreed.

Waste Management, Inc. has adequate financial resources and all of their accounts are in good standing. Should you have additional questions about our relationship with Waste Management, please do not hesitate to contact me by phone at: 312-992-3882 or by email at: michael.contreras@baml.com.

Please note that the information set forth in this letter is subject to change without notice, and is provided in strict confidence, without any responsibility or liability on the part of Bank of America, N.A. Bank of America, N.A. undertakes no responsibility to update the information set forth in this letter.

Very truly yours,

BANK OF AMERICA, N.A.

Michael Contreras
Vice President





WASTE MANAGEMENT INC.

1001 Fannin Street
Houston, TX 77002
(713) 512-6200

October 7, 2015

City of Milpitas
City Hall
455 East Calaveras Blvd.
Milpitas, CA 95035

To the City of Milpitas:

There have been no material adverse changes in such condition or operations, as reflected in the submitted balance sheet and income statements, since the date on which they were prepared.

Sincerely,

A handwritten signature in dark ink, appearing to read "James C. Fish, Jr.", written over a circular stamp or seal.

James C. Fish, Jr.
EVP and Chief Financial Officer
Waste Management, Inc.



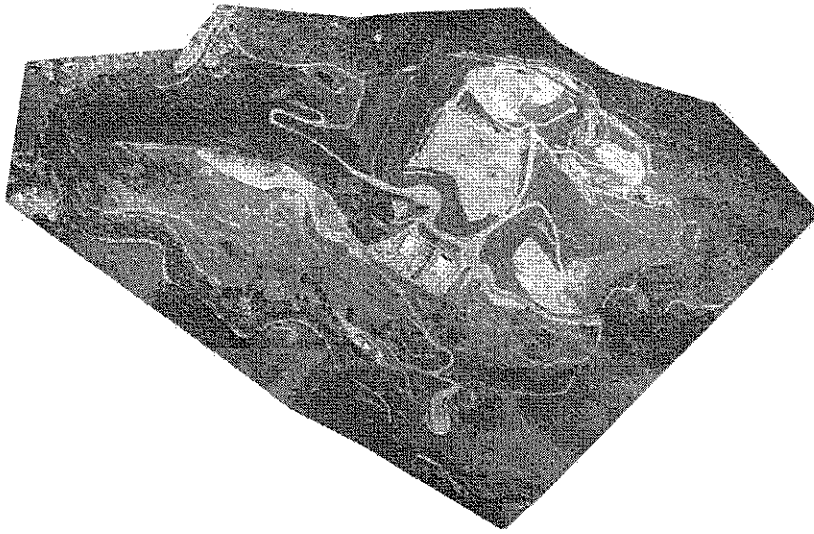
3. TRANSFER AND TRANSPORT (OPTIONAL)

Waste Management of South Bay will direct Haul all MSW, yard waste and C&D to Guadalupe Recycling & Disposal Facility, and bring all mixed organics to Mission Trail Waste System Facility in Santa Clara.

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4. DISPOSAL – GUADALUPE RECYCLING & DISPOSAL FACILITY

Guadalupe Recycling and Disposal Facility



The Guadalupe Rubbish Disposal Company, DBA Guadalupe Recycling and Disposal Facility ("Guadalupe") is a Class III solid waste landfill with a permitted Construction and Demolition Material Recovery Facility (MRF). Guadalupe and Guadalupe MRF are located approximately four miles east of Highway 17 and 9.5 miles south of the City Center of the City of San Jose California. The physical address of the facility is 15999 Guadalupe Mines Road, San Jose California. The mailing address is PO Box 20957 San Jose CA, 95160. It is located in the South Eastern portion of Santa Clara County, in the City of San Jose.

Site specific requirements

Guadalupe is permitted to accept 3,650 tons per day (tpd) of non-hazardous, non-designated municipal solid waste with no restrictions on a daily vehicle count. This includes 672 tpd of permitted peak tons of yard waste per operating day. There are restrictions on green waste from leaving the county due to sudden oak death disease, and restrictions of waste coming in to the county from Alameda County by means of a tax. Permitted hours of operation do not restrict the site's current operations.

The maximum permitted hours of operation are as follows:

- Landfill Operations – 7am to 8pm seven days per week.
- Commercial Collection Operations – 6am to 6pm M-F, 8am to 5pm Sat & Sun.
- Public Disposal Operations – 8am to 5pm five days per week.

The types of wastes accepted includes all non-hazardous solid and semi solid wastes, which include Class III wastes, C&D wastes, non-friable asbestos, contaminated soil, sludges, ashes from household burning, and various special wastes.

Guadalupe accepts and or processes the following waste streams:

Landfilled Waste

- Putrescible and non-putrescible solid, semi-solid, and liquid wastes which include:
 - Garbage, trash, refuse, paper, rubbish, and ashes
 - Industrial wastes, construction and demolition wastes
 - Select discarded home and industrial appliances
 - Manure, vegetable or animal solid and semi-solid wastes
 - Treated Medical Waste
 - Triple rinsed containers in accordance with Title 22, CCR, Section 66261.7
 - Waste containing less than 50% solids, which have been approved by the LEA and RWQCB
 - Ashes from household burning

Accepted with approval from the WM Waste Approval Manager are:

- Treated Wood Waste
- Contaminated soils and other Industrial Waste Non-friable asbestos
- Treated non-liquid sewage treatment residue such as solids from screens, settling tanks and grit chambers, and sludge containing at least 15-20% solids

The following are accepted at the Guadalupe for drop-off and processing (not for disposal):

- Tires
- Electronic waste (e.g. televisions, computer monitors, etc.)
- Chlorofluorocarbon (CFC) [Freon]-containing appliances (white goods such as refrigerators, freezers, and air conditioners)

Types of Processing Offered

- Class III solid waste land filling
- Non-friable asbestos disposal
- Management of petroleum contaminated soils for re-use as cover or disposal
- C&D processing and recovery under the City of San Jose's Construction & Demolition Diversion Deposit (CDDD) program
- Free ewaste acceptance for customers

Current hours of operation for disposal are 6:00 AM to 4:00 PM Monday through Friday, and Saturday 8:00 AM to 4:00 PM. The MRF is open to receive material 7:00 am to 4:00 pm Monday through Friday and Saturday from 8:00am until 1:00 pm. The WM EarthCare Materials Yard is open the same hours as the MRF.

Guadalupe is typically closed for the Thanksgiving, Christmas, and New Year's Day holidays, but holiday schedules may vary based on contractual obligations. Administrative holidays are generally New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Day after Thanksgiving, and Christmas Day.

Operational History:

Guadalupe resides on approximately 411 acres of land located in the Santa Cruz Mountains' foothills. The landfill's permitted waste disposal area is 115 acres. Design modifications have required construction of a toe berm on the



Disposal Services

Section 4: Disposal – Guadalupe Recycling & Disposal Facility



western side of the landfill and will require a toe berm on the eastern side of the Module 3 containment. These modifications have reduced the current proposed disposal area to approximately 107 acres. Guadalupe began accepting waste in 1929 under private ownership. The landfill is divided into several areas referred to as Parcels 1, 2 and 3. As the site started disposal operations in 1929, waste disposal in the older portions of the landfill (Parcel 1 and most of Parcel 2), preceded Subtitle D regulations. Years of operation and waste disposal dictated a need for permit expansions and subsequent needs for utilization of the additional parcels of land for new disposal area. In 1991 the facility was permitted for the final expansion from 65 to 115 acres. Waste Management purchased the site from the private owners in 1998 and operated the site under the name Guadalupe Rubbish Disposal Company Inc. until 2010 when a DBA, Guadalupe Recycling and Disposal Facility, was adopted. In 2001 a permitted and dedicated Construction and Demolition Waste sort line was constructed and began operation at the site.

The site is situated in a narrow northwest trending canyon within the foothill ridges. The natural topography of the site and surrounding properties is moderately steep. The landfill was designed and has been developed as a canyon fill using the area fill method. Development has progressed in three areas referred to as Parcels or Modules 1, 2, and 3. Landfill development began in the western part of Module 1 and over the years has progressed into all three modules that now comprise the 115 acre disposal area.

Parcel 1 is a 26-acre unlined disposal area that is underlain by low permeability geologic strata. Parcel 2 is a 39-acre disposal area which is lined primarily with a low-permeability soil layer (clay liner) with a leachate control and recovery system (LCRS). An 8-acre area within Parcel 2 was lined with a prescriptive standard composite (geo-membrane/low permeability soil) liner system. Parcels 1 and 2 of the landfill are not constructed with a prescriptive leachate control and removal system (LCRS), however, alternative engineered leachate controls are in place within and adjacent to these parcels. Parcel 3 comprises the remaining 50 acres of the permitted landfill that has been or will be constructed and is designed to meet Subtitle D and Title 27 standards for waste containment and leachate collection, i.e., a composite liner system and LCRS. The composite liner system incorporates several alternate engineering design components that have been approved, and meet or exceed the prescriptive design.

Leachate disposal from the modules is a combination of gravity flow to an onsite city sewer connection for the north side waste modules, and gravity flow to on site storage tanks for the south side waste modules. The storage tanks are then pumped into a truck and disposed of at the on site city sewer connection.

Landfill gas (LFG) is extracted and collected via a comprehensive gas collection and control system (GCCS). Until 2013, the collected LFG was conveyed and sold to a power plant located on site owned by Fortistar Methane Group LLC (FMG), and operated by Guadalupe Energy Holdings LLC (GEH) a wholly owned subsidiary of FMG. In 2013, Waste Management purchased the power plant and began the permitting process to relocate it outside of the landfill disposal footprint. When approved, the new plant will be on line in 2016. It is anticipated to generate 3.2 MW of power. Currently LFG is destroyed in an onsite flare that operates 24/7 to keep the site in compliance with air emission regulations.

Description of Regulatory Agencies

CalRecycle (formerly California Integrated Waste Management Board)

Class III solid waste facilities are required to have a Solid Waste Facility Permit (SWFP) issued by the Local Enforcement Agency (LEA) and concurred on by CalRecycle. The permit lists conditions under which the facility must operate. The LEA for Guadalupe is the City of San Jose Department of Planning, Building, and Code Enforcement. This permit was last approved on March 23, 2014 and will be reviewed next by March 23, 2019.

Regional Water Quality Control Board (RWQCB)

Waste Discharge Requirements

The State Water Resources Control Board ("SWRCB") requires that landfills obtain Waste Discharge Requirements (WDRs) that address the facility's potential to impact groundwater. The San Francisco Bay Region (RWQCB) is the local

agency under the SWRCB that has the jurisdiction and authority to issue site-specific WDRs for the Guadalupe.

Guadalupe is classified and permitted as a Class III disposal facility and is regulated in part by the WDRs for the facility as approved and issued by the RWQCB. Monitoring is conducted in accordance with the Monitoring and Reporting Program (MRP) element of the WDRs. The San Francisco Bay Region RWQCB issued order No. R2-2011-037, the Guadalupe's current WDRs, on June 2011.

General Industrial Storm Water Discharge Permit

The RWQCB also regulates municipal and industrial storm water discharge requirements for landfills under the National Pollutant Discharge Elimination System (NPDES) program. To obtain authorization for industrial storm water discharge, a Notice of Intent for a General Permit to Discharge Storm Water Associated with Industrial Activity was filed with the RWQCB by Guadalupe on July 7, 1992. The RWQCB issued a General Industrial Activities Storm Water Discharge Permit and Guadalupe maintains a current Storm Water Pollution Prevention Plan (SWPPP) that describes how the site complies with this permit.

Bay Area Air Quality Management District (BAAQMD)

Guadalupe falls under the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). It operates under a BAAQMD Permit to Operate that lists all sources at the facility that are regulated by the BAAQMD and sets source-specific conditions as applicable. The BAAQMD Permit to Operate conditions are also incorporated into the Federal Title V Permit for Guadalupe as issued by BAAQMD under delegated authority from the Environmental Protection Agency (EPA).

Permitted sources include, but are not limited to, the landfill and its associated abatement devices such as the flare and future WMRE gas-to-energy plants, the C&D MRF, the wood grinding operation and the portable diesel powered air compressor. The BAAQMD permit to operate is re-issued annually in July. Permit additions or revisions are made during the year as needed to address new sources or changes to currently permitted sources. These additions or revisions made during the year are eventually incorporated in the 5 year renewal of the site-wide Title V permit. The BAAQMD issued a Federal Title V Permit for the Guadalupe on December 20, 2013 and the current five year Title V permit expires December 20, 2018. (A renewal application will be submitted by June 19, 2018.)

City of San Jose Code Enforcement Division-LEA

LEA

The City of San Jose Department of Planning, Building, and Code Enforcement is the Local Enforcement Agency (LEA) that has jurisdiction over the Guadalupe. The LEA issues and enforces the terms and conditions of the SWFP issued by the CIWMB and other applicable regulations, and conducts regular inspections of the landfill.

CUPA

The Santa Clara County Department of Environmental Health (SCCDEH) acting as the Certified Unified Program Agency (CUPA) along with the local San Jose Fire Department Inspector, coordinate and enforce numerous local, state, and federal hazardous materials management and environmental protection programs in the county. The CUPA administers the following programs at Guadalupe:

- Hazardous Materials Business Plan Program (HMBP)
- Hazardous Waste Generator Program
- Underground Store Tank Certifications

Planning Department Planned Development Permit



Disposal Services

Section 4: Disposal – Guadalupe Recycling & Disposal Facility



The City of San Jose Planning Department is the local planning agency that has jurisdiction Guadalupe and issued a Planned Development Permit (PD # 93-05-018) to the facility February 12, 1997. The permit is good for the life of the facility.

Current Regulatory Environment

Guadalupe has a dedicated Environmental Protection (EP) Manager that works closely with the Local Enforcement Agency (LEA) to discuss changes in regulations and ensure overall site integrity. This successful working relationship has been advantageous in resolving issues before they become a reportable finding.

There are a variety of agencies (local, state, and federal) that govern landfill and gas collection activities at Guadalupe and each has its own considerations and concerns.

- Solid Waste Facility Permit # 43-AN-0015
- City of San Jose Planned Development Permit Resolution # 97-8, 93-05-018
- Bay Area Air Quality Management District (BAAQMD) Title V Permit Facility # A3294
- California Regional Water Quality Control Board (CRWQCB) Waste Discharge Requirements (WDR's) Order # R2-2011-0037
- CRWQCB NPDES General Industrial Activities Storm water Discharge Permit No. CAS 000001
- San Jose/Santa Clara Water Pollution Control Plant Industrial Wastewater Discharge Permit # SJ-300B
- San Jose Fire Department Underground Storage Tank Operating Permit # 43-060-403506-000-8&9
- State of California Department of Industrial Relations Division of Occupational Safety and Health – Permit to Operate Air Pressure Tank –State # A001737-07, A033130-77, A000227-90, A003343-87 N.B.#/SER.# 75585, 2757, 476082, 463323
- Santa Clara County Weights and Measures Division Registration Certificate # 2509
- City of San Jose / County of Santa Clara Unified Program Hazardous Material Permit # 403506

Regulatory Inspections and Records

Local, Regional, and State inspections for environmental and permit compliance occur on a frequent basis pursuant to permit and regulatory requirements. Typically this is about once per month for the City of San Jose and 18-months for the CIWMB (Cal Recycle). Records of inspections are maintained and are available for review on-site. Consistently positive comments on compliance with applicable regulations have been received by the facility from regulators and customers alike.

Regulatory Contacts

City of San Jose

Solid Waste Local Enforcement Agency
200 E. Santa Clara Street
San Jose, CA 95113
Sharon Clute, Environmental Inspector

City of San Jose

Department of Planning, Building and Code Enforcement
200 E. Santa Clara Street
San Jose, CA 95113
Joe Horwedel, Director

Bay Area Air Quality Management District (BAAQMD)

939 Ellis Street
San Francisco, CA 94109
415-771-6000

California Environmental Protection Agency Department of Toxic Substances Control

1001 I Street, 25th Floor
Sacramento, CA 95812
916-324-1826

Cal Recycle

8800 Cal Center Drive
Sacramento, CA 95826
Reinhard Hohlwein
916-341-6344
Nancy Jesterby (Financial Assurances)
916-341-6345

California Regional Water Quality Control Board (CRWQCB)

1515 Clay Street, Suite 1400
Oakland, CA 94612
Loretta K. Barsamian, Executive Officer
510-622-2300

California Department of Fish & Game, Region 3

P.O. Box 47
Yountville, CA 94599
Janice Gan
209-835-6910

California Division of Occupational Safety & Health/ Cal OSHA

1515 Clay Street Room 1301
Oakland, CA 94612
510-622-2916

U.S. Fish & Wildlife Service

Sacramento Endangered Species Office
2800 Cottage Way, Room, W-2605
Sacramento, CA 95825-1846
Jim Browning
916-414-6685

Army Corps of Engineers

U.S. Army Corps of Engineers, Sacramento District
1325 J. Street
Sacramento, CA 95814-2922
916-557-5250

Facility Violations

One AIV, and one NOV were received for Guadalupe in 2011. California Regional Water Quality Control Board issued a Notice of Violation on 5/23/11 for the discharge of landfill gas condensate to the ground and waters of the state and



Disposal Services

Section 4: Disposal – Guadalupe Recycling & Disposal Facility



the US in December 2010. One AIV was issued in 7/2011 by Santa Clara County when the inspector identified a failure with the positive shutdown during the annual UST inspection.

Description of current annual tonnage received at the landfill (past 3 years minimum), in-place densities, permitted capacity (cubic yards, tonnage, and calculation detail), and remaining landfill life (including assumptions and calculations).

The current annual tonnage received at Guadalupe:

- 2014: 266,272 tons
- 2013: 194,258 tons
- 2012: 187,129 tons

As of January 1, 2014, 18,265,951 bcy of waste is in-place at Guadalupe. 9,573,588 cy or 9,394,974 tons (based on 0.899 AUF) remain to be placed. With an assumption of 200,000 tons/yr, this calculates to 45.8 yrs of life remaining or year 2062 as closure of Guadalupe.

Discussion of any planned or future site expansions.

No planned site expansion

Describe any MSW landfill diversion activities which would be applied to the MSW this proposal would deliver.

Current processing operations are focused on sustainability and maximum diversion from disposal. Also, the site team is dedicated to revisiting current operations with a view of increasing recovery and diversion. The site constantly explores alternative reuse opportunities and improved technology and processes to further our sustainability targets. Any recoverable resource material will be removed from appropriate MSW for diversion.

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5. MATERIAL DROP-OFF (OPTIONAL)

Waste Management of South Bay will offer a Residential "Dollar Dump Day" for all residential customers of Milpitas.

Dollar Dump Day will be available once per year on a date mutually agreed upon with the City at the Fremont Recycling and Transfer Station, located at 41149 Boyce Rd, Fremont, CA 94538. Suggested operating hours will be from 8:00 am to 3:00 pm. For \$1 per car, truck or trailer load not to exceed 2-cubic yards, residents showing proof of residency in the City of Milpitas can drop off material at the \$1 rate. Loads in excess of 2-cubic yards will be charged regular gate rates. No commercial vehicles or universal waste will be allowed or collected. E-Waste and Universal Waste drop off events will be conducted separately. Tires, televisions, computers and monitors will be charged regular rates. Refrigerators, freezers and air conditioners must have a Freon removal certificate or these items will be charged regular rates. Used motor and cooking oil will also be accepted.

Based on our experience with similar events in other communities and the use of publicity and community engagement, we anticipate Dollar Dump Day will produce approximately 500 tons of material to be sorted and diverted.

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6. ACCEPTANCE OF DISPOSAL AGREEMENT

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7. COST FORMS

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8. OTHER PROPOSAL FORMS

Secretary's Certificate

ASSISTANT SECRETARY'S CERTIFICATE

**USA WASTE OF CALIFORNIA, INC.
dba WASTE MANAGEMENT OF SOUTH BAY**

The undersigned, being the Assistant Secretary of USA Waste of California, Inc. dba Waste Management of South Bay, a Delaware corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that Barry S. Skolnick (President), or any officer of the Company, be and hereby are authorized, following compliance with appropriate corporate policies and procedures, to execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as they may deem appropriate or necessary pertaining to or relating to the City of Milpitas, Request for Proposals for Solid Waste, Recyclables and Organics Collection, Processing and Disposal Services, and that any such action taken to date is hereby ratified and approved.

Dated: October 8th, 2015


David Stratton
Assistant Secretary

**ATTACHMENT 6:
ANTI-COLLUSION AFFIDAVIT**

Proposer's Name USA Waste of California, Inc., dba
Waste Management of South Bay

**FOR: CITY OF MILPITAS SOLID WASTE, RECYCLABLES AND ORGANICS COLLECTION, PROCESSING AND
DISPOSAL SERVICES**

Proposer declares under penalty of perjury under the laws of the State of California that this proposal is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such proposal is genuine and not collusive or sham; that said Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from submitting a proposal; that said Proposer has not in any manner directly or indirectly sought by agreement, communication, or conference with anyone to fix the proposal price of said Proposer or of any other Proposer, or to fix any overhead, profit, or cost element of such proposal price, or of that of any other Proposer, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in such proposal are true, and further, that said Proposer has not directly or indirectly submitted his proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, or to any other individual except to any person or persons as have a partnership or other financial interest with said Proposer in this general business.

The above Non-Collusion Declaration is part of the proposal. Signing this proposal on the signature page thereof shall also constitute signature of this Non-Collusion Declaration.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

July 6, 2015

Page 1

HF&H Consultants, LLC



Disposal Services

Section 8: Other Proposal Forms



**ATTACHMENT 7:
IRAN CONTRACTING CERTIFICATION**

Pursuant to Public Contract Code Section 2200 et seq., ("Iran Contracting Act of 2010"), Contractor certifies that:

- (1) Contractor is not identified on the list created by the California Department of General Services ("DGS") pursuant to California Public Contract Code Section 2203(b) as a Person engaging in investment activities in Iran; and
- (2) Contractor is not a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another Person, for forty-five (45) Days or more, if that Person will use the credit to provide goods or services in the energy sector in Iran and is identified on the DGS list made pursuant to Section 2203(b).

As used herein, "Person" shall mean a "Person" as defined in Public Contract Code Section 2202(e).

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the Contractor to this Certification, which is made under the laws of the State of California.

USA Waste of California, Inc. ("Contractor") dba Waste Management of South Bay

By: _____ (Signature)

Name: Barry Skolnick (Printed Name)

Title: President

Date: 10/9/2015

EXHIBIT E: PERFORMANCE BOND

- 1 To be inserted prior to final award

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EXHIBIT F: LABOR AGREEMENT(S)

- 1 Placeholder - not applicable as of Effective Date.

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EXHIBIT G: **PER-TON RATES APPROVED BY CITY** **FOR RATE PERIOD ONE**

	Rate Period 1 September 6, 2017 through December 31, 2018
Total Contractor Component (\$/ton)	\$22.42
Governmental Fee Component	
CA AB939 (AB1220)	\$1.40
San José Business Tax	\$13.00
County Planning Fee	\$0.78
Household Hazardous Waste Fee	\$1.50
County AB\939	\$2.60
City of San José LEA	\$1.08
Total Governmental Component (\$/ton)	\$20.36
Total Per-Ton Rate	\$42.78

* Transfer station fee includes all transfer facility-related costs and the long-haul transportation costs from the transfer station to the disposal facility.

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EXHIBIT H: APPROVED SUBCONTRACTORS

1 PLACEHOLDER – NO SUBCONTRACTORS AS OF EFFECTIVE DATE

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